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Government
Publications

No. R-10 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Resources Development

Occupational Health and Safety Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Wednesday 7 February 1990



Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 7 February 1990

The committee met at 0903 in the Westminster Room, Radisson Hotel, London, Ontario.

OCCUPATIONAL HEALTH AND SAFETY STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Chair: The standing committee on resources development of the Ontario Legislature will come to order. We are holding hearings on Bill 208, as you know, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Legislature gave us the task of taking the bill around the province to have public submissions on it. When those public submissions are ended in the next couple of weeks, this committee will then sit down and debate the bill clause by clause to determine what, if any, amendments should be made to the bill, at which point it will then be reported back to the Legislature for final determination.

The membership of the committee is made up in the same proportion as membership in the Legislature. In this case it is six government members, two New Democrats and two Progressive Conservatives, and of course I am the neutral chair. I would like to introduce the members of the committee to you. On my far right is Michael Dietsch, the member for St Catharines-Brock.

[Interruption]

The Chair: Order please. You do want to have the members of the committee introduced to you, do you not? Hold your applause until the end.

Next to Mr Dietsch is David Fleet, the member for High Park-Swansea in Toronto. On my immediate right is Gordon Miller, the member for Norfolk. Next to him is Ron Lipsett, the member for Grey, and next to him is Jack Riddell, the member for Huron. On my left is Doug Wiseman, the member for Lanark-Renfrew; Bud Wildman, the member for Algoma, and—I keep forgetting his name—Bob MacKenzie, the member for Hamilton East. I am Floyd Laughren and I represent the riding of Nickel Belt up near Sudbury.

[Interruption]

The Chair: You are clapping too soon. I am a neutral chair. On my right is Lynn Mellor, the clerk of the committee.

On a very serious note, we have a full schedule of hearings that go right through until 5:30 this afternoon. We must try and keep on time. We have allotted 30 minutes for each presentation. People can take the full 30 minutes themselves or they can save some of the 30 minutes for an exchange with members of the committee.

As a committee of the Legislature, we are an extension of the Legislature and there are some basic rules we must follow. I am telling you I am really serious about this. When people come before the committee, they are here at the invitation of the committee. We want them here, we want to hear their views. It is entirely inappropriate for people to be harassed while they are giving presentations to the committee or during an exchange with members of the committee. I think you would want to be treated that way yourselves. Just because their views might differ from yours, I am sure you would agree they have a right to be heard without harassment. I would urge you to do that, to let people have their say and to express their views.

It is not the people making the presentations who will determine the outcome of the bill. It is the members of the committee and of the Legislature who will determine how this bill will end up. Because people make a presentation to the committee and their views are different from yours, that does not mean they will affect the determination of the bill. So keep that in mind. It is the members of this committee who will determine in what way the bill should be amended.

I do not want to cut into the time any more, so I think we should move right into the first presentation, which is the London and District Labour Council. If those people are here, would they take their seats.

We do apologize for the size of the room. We tried to get a bigger one. We did not know at the beginning that there would be this many people here, and it was just impossible.

Interjections.

The Chair: We wish that everybody could have a chair, but we simply cannot do anything

about that at this point. So without further ado, we will move right into the first presentation. If you will introduce yourselves, the next 30 minutes are yours.

LONDON AND DISTRICT LABOUR COUNCIL

Mr Ashton: If I might, my name is Jim Ashton, president of the London and District Labour Council. To my immediate left is Rick Burridge, from the grain millers' union; to my far left is Bill Francis, the United Steelworkers; and to my immediate right is Hector McLellan, the Canadian Auto Workers.

I just might point out the significance of the flowers on our table today. Each one of those flowers represents the death of one individual in this province over the last year. They represent deaths only by traumatic accident; they do not represent deaths because of occupational disease. I am sure we could fill the room if in fact we did that.

Before I turn it over to the people who will present the actual brief, let me just open with a few remarks. Let me say that the reason we are here today is not to talk about cost-effectiveness; we are not here to talk about being competitive; we are not here, as some provinces have attempted to do across this country, to put us on a level playing field so that we can better participate in the free trade agreement. We are here about the loss of lives in this province, which is not acceptable. Not one life can be worth the combination of all those issues I just mentioned.

Last year in this province 285 men and women went to work in the morning and they never came home; 285 mothers and fathers, sons and daughters, husbands and wives who are not going to be here this year; who are not going to enjoy another spring, who are not going to enjoy another Christmas. The carnage in this province has to stop. When we add to that the 9,000 people who will not be able to enjoy the simple pursuits of daily life because of disablement, the quarter of a million people in Ontario who were injured over the last year, it has gone too far. It is time something was done in this province.

0910

We are not here to talk about partisan politics, because I am sure those 285 people who died last year were Liberals, Conservatives and New Democrats. It is time we rose above that. This committee, I suggest, has the responsibility—more important than that, it has the power—to

make the changes to save the lives of the working people of this province.

If I would just have you look over my shoulder, we have approximately 285 people in this room, the same number of people who died. Those people last year, what were they? Statistics; we cannot put a name to them, we cannot put a face to them. Surely this committee would not sit here this morning and condemn these 285 people.

I would suggest that the blood of many of the workers of this province rests in your hands. You have an obligation to do the right thing. You have an obligation to do the only thing, and that is to withdraw the present legislation, bring back in Bill 208 with the amendments that we have suggested over the last year. I hope you give that consideration. We cannot continue to allow people to die in this province. We must put an end to the carnage and we must, as best we can, assure that the legislation does that.

At this point, I would like to turn it over to Hector McLellan.

Mr McLellan: Good morning. I would like to thank the committee for the opportunity to place before you this brief outlining the concerns of the London and District Labour Council with Bill 208 at its second reading.

This submission is about workers' rights to protect themselves from injury and death in the workplace. This submission will deal with the following amendments: inspections; certified worker—right to stop work; right to stop work—activity; internal responsibility system.

The statistics for the Workers' Compensation Board, London regional office, state that in 1988 there were 35,000 new workers' compensation claims—675 injuries per week. Of these, 305 per week were severe enough to cause a worker to miss work. These statistics alone suggest a need for preventive measures and education in the area of occupational health and safety.

Inspections: At present, when a Ministry of Labour inspector comes to the workplace to conduct internal responsibility audits, orders are usually issued for infractions. Since inspections have been identified as an important tool for identifying and resolving health and safety issues, yearly inspections of the workplace are simply not sufficient to ensure safe and healthy workplaces. The London and District Labour Council feels that inspections must be at least monthly, and of the entire workplace.

We would propose the following wording: "Unless otherwise required by the regulations or in any order by the inspector, a health and safety

representative shall inspect the physical condition of the entire workplace each month." Since the Ministry of Labour is giving us this internal responsibility to inspect the workplace, it is all the more reason to inspect the entire workplace once a month.

I have some statistics. In 1986-87, we had 26,268 inspections. Along with that, we had 209,255 lost-time claims. In 1987-88, we had 24,611 inspections, 1,657 fewer inspections, which resulted in 215,184 lost-time claims, an increase.

Fatalities: In 1987, 238; in 1988, 293. Therefore, a need for monthly inspections with the right to shut down is essential.

Mr Burrige: Certified worker—right to shut down: "The right to stop work is granted to certified joint health and safety committee members only in order that dangerous work that should be stopped may be recognized and stopped before a worker is injured."

"This authority is given in the context of a comprehensive process to internalize to the workplace the training, knowledge and capability to identify and reduce occupational hazards."

"A large part of our approach to health and safety is to improve the level of knowledge and awareness of those in the workplace. The introduction of certification of those who reach a designated level of skill provides the workplace parties with an important new resource to resolve health and safety concerns in their own workplace. The certification process will ensure that individuals have knowledge and judgement to exercise this responsibility."

This comes from the Ministry of Labour publication, Occupational Health and Safety Reform, 24 January 1989, questions and answers.

Under the current language of the Occupational Health and Safety Act, a worker may refuse to do an unsafe task if that worker has "reason to believe" the job may endanger. In the second stage of the work refusal, after the initial investigation has taken place to continue his work refusal, the worker must now have "reasonable grounds." Taking into consideration the worker's lack of training in legislation, in health effects of toxic chemicals and in control measures available in controlling hazards, the refusal process has been properly and justifiably executed.

Educating the certified members of the joint health and safety committee beyond their present level, and granting them, as a minimum guideline, "reasonable grounds" (defined as an objec-

tive test requiring accurate facts) would greatly enhance the safety conditions of that particular workplace.

Prior to the passing of Bill 70, the corporations were up in arms over section 23, the right to refuse unsafe work. They were adamant that the right would be abused and cause great difficulties for the production processes. This did not happen. To the contrary, when a refusal took place requiring a Ministry of Labour inspector, in a large percentage of cases corrective orders were left to the employer.

Again, the corporations, through the Canadian Manufacturers' Association and Motor Vehicle Manufacturers' Association, have pressured the minister to impose restrictive language surrounding this necessary right. The language for this right presently exists in the state of Victoria legislation in Australia, in the health and safety legislation in Sweden and, closer to home, in Ontario's mining collective agreements. Incidentally, according to the Ministry of Labour Ontario statistics from the mining sector, the right is not being abused. However, putting supportive statistics aside and submitting to corporations' pressures, the Honourable Gerry Phillips has taken one of the most important parts of the proposed legislation and not only negated the intent of the language but has also created a situation where the certified member now has to shoulder the economic responsibility of taking wages out of the worker's pocket due to the employer's breach of the health and safety legislation. To understand how he has done this requires a theoretical application of his modifications to the bill to workplace scenarios.

Mr McLellan: The minister's proposed legislation states that a certified member may stop a work procedure when "there is immediate danger that is also a contravention of the law or regulations." There are many complex situations in the workplace that are not covered by the legislation. Working with a potential carcinogen and considering the latency period of the disease does not pose imminent or immediate danger. The result of working with a teratogen or a mutagen will not show immediate repercussions. However, in some circumstances even the most minute contact may prove devastating in future years.

0920

There must be some protection afforded to the workers from the increasing influx of hazardous chemicals in Ontario workplaces, protection that can only be offered by an educated, certified member of the joint health and safety committee,

a certified member who may have, incidentally, more knowledge than management.

The minister then even further restricts this procedure by implying that a joint agreement by both company and worker members of the joint health and safety committee can justify a right to stop work. If there were a joint agreement by both labour and corporations in the first place, there would be no need for the process at all. Emphasis is being placed on an internal responsibility system, a system that presently is not functioning.

The minister then introduces language under subsection 19(4) regarding payment. The proposed Bill 208 suggests that time spent by workers during a refusal is work time and such time is to be paid by the employer. The following questions arise: Is this 100 per cent pay? Does this provision include affected workers? Is this only in the first stage of the refusal, or does it include all stages as to the inspector's decision? Is payment provided when a stop-work order is issued by a certified member? If the work order affects other workers, for example, assembly line shutdowns, is pay provided? What stages are applicable?

Mr Burridge: We urge the minister to withdraw his proposal in this section of Bill 208. Not only will this be an unworkable suggestion, but it is a step backward from our current legislation. Workers are presently being paid for work refusals under the present language. Certified members of joint health and safety committees should not have to bear such an economic burden.

Workers are presently being paid for employer-induced production stoppages that result from poor quality being caught by their quality inspectors. Payment only becomes an issue with employers when they do not control the circumstances, which, incidentally, could be as easy as complying with the Occupational Health and Safety Act.

It is clear, through WCB statistics, that under the present legislation workplace-related injuries and illness are in an escalative mode. The only time when the figures indicated a downturn was in 1982 and 1983, and it should be understood that the downturn does not imply that illness and injuries declined but that those years' statistics indicate economic depression.

Surely Greg Sorbara, the then Minister of Labour, realized the impact the right to stop work by a certified member would have on reducing the WCB statistics and creating a safer workplace for workers in Ontario. To lose that right through

the restrictive proposed language will only cause their costs and figures to increase and create a situation that neither labour nor corporations desire.

Mr McLellan: The right to refuse activity: In the proposed Bill 208 of January 1989, the minister expanded our individual right to refuse unsafe work by including activity, which meant that we could refuse to lift or do repetitive actions that could lead to repetitive strain injuries. While the Ontario Labour Relations Board has already expanded our right to refuse to include such activities as lifting heavy loads, the amendment would have clarified this intent.

The January proposal said:

"19(1) Subsection 23(3) of the said act is amended by adding thereto the following clause:

"(ba) the work activity the worker is required to perform is likely to endanger the worker or another worker.

"(2) Subsection 23(6) of the said act is amended by adding the following clause:

"(ba) the work activity the worker is required to perform is likely to endanger the worker or another worker.

"(3) Subsection 23(8) of the said act is amended by inserting after 'thing' in the third line 'work activity.'"

Under the present language, workers in Ontario are receiving support from the Ministry of Labour inspectors in the form of orders to the employer where there may be a danger of repetitive strain injuries. The originally proposed language would add increasing support. Unfortunately, the honourable minister has defined "activity" to apply to current or immediate dangers like lifting but will exclude ergonomic or design problems that lead to long-term repetitive strains. These he promises to deal with in workplace joint health and safety committees. Since there are no regulations on ergonomics, our very real problem in dealing with this will continue and our right to refuse has not substantially moved forward.

The labour council has found that in large corporations, ergonomically inclined intentions somehow fall by the wayside somewhere between the plant manager and the shop floor supervisor. The manager's intentions are good; however, the floor supervisor answers to the production call and ergonomic changes, since not supported anywhere in the legislation, do not get implemented. The small corporations do not have the engineering facilities to make the changes, so they just do not address the concerns

of the joint health and safety committee regarding ergonomics.

The minister's definition of "activity," as restrictive as it is, is also very ambiguous. For example, does the activity include turning? What are the parameters of the term "lifting"? Does this include turning or twisting while lifting or carrying a heavy load? What is the definition of the word "lift"? Will there be a specific measurement for weight, distance lifted or distance from the body? If the weight of the lift is acceptable but the drop point is such a distance from the body as to create injury, will the drop be considered as part of the lift? As we have outlined, the lack of specific language, or more specifically the ill-defined definition of "activity," would do nothing to assist the ministry in its quandary.

Some facts to shed light on the severe conditions and numbers of repetitive strain injuries and disease and illness: In 1986, there were 93,637 sprain and strain injuries, 48.2 per cent of all injuries. In 1987, there were 97,686 sprain and strain injuries, 48.17 per cent of all injuries. In 1986, there were 1,926 incidences of illness and disease due to synovitis, inflammation of the joints and tendons. In 1987, there were 2,309 incidences of illness and disease due to repetitive strains.

These facts cannot be avoided. There is a tragic, personal, human story that goes with each statistic. Repetitive strain should be clarified, not mystified, by the new legislation. Lifting activity should be spelled out and clarified, and there should be amendments ensuring that repetitive strain injuries fall under legislation of a work refusal.

Mr Burridge: The internal responsibility system: This topic is the simplest yet the most complicated to deal with. The corporations will tell this committee that the internal responsibility system exists and is functioning well. Labour will easily show this committee documented areas where the system is not only not functioning, but incidents where corporations use this system to deter the joint health and safety committees by the red tape within the system. If you ask the Ministry of Labour, the ministry has no recourse except to agree with labour. This is why we see orders to the employer written by the Ministry of Labour inspectors outlining methods to improve procedures to implement or, even more specifically, directives to establish, an internal responsibility system.

0930

We are not speaking of farfetched circumstances surrounding hypothetical corporations. This kind of problem exists in corporations both large and small. We can show this committee occasions in a London corporation where "Orders to the Employer" have been left by the Ministry of Labour inspectors to "train supervisors in their duties and responsibilities under the act." "Supervisors do not appear to know what their duties and responsibilities under the act are." "Enforcement of company safety policies and regulations was noted to be nonexistent in some areas." "Supervisors...lacked the knowledge of the hazards associated with the ongoing processes."

We will use the example of an employee losing his hand on 14 December 1989 at this London corporation. The company has had numerous orders from the Ministry of Labour ordering proper guarding and training programs dating back to March 1986. On 25 May 1989, an order was issued by the Ministry of Labour under section 28 of the regulations, machine guarding. Machine guarding requirements in general on all machinery were also discussed at the time these orders were issued. It was also noted from the joint health and safety committee minutes that machine guarding appeared on more than one occasion.

Since the issuance of this order, the joint health and safety committee minutes reflect noncompliance with section 28 of the regulations. On 20 June 1989, workers identified noncompliance in guarding three times; on 17 October 1989, noncompliance in guarding three more times, and on 21 November 1989, and this was just three weeks prior to the accident which resulted in the worker losing his hand, there were five infractions in guarding noted on the safety minutes.

I respectfully submit to this committee that the documentation I have presented would be further proof that the internal responsibility system is not working. The workers' right to identify hazards was used 11 times in three separate joint health and safety meetings identifying violations in machine guarding, and more specifically on radial arm saws. The company listened but did nothing to rectify the situation.

The Ministry of Labour inspectors ordered guarding and reminded the parties of the importance of guarding. Days after, on 14 December 1989, after a supervisor set up the radial arm saw without any guarding, the worker lost his hand. The internal responsibility system is certainly not working, and companies should

be heavily fined before this situation will change.

Mr McLellan: Before my conclusion, I would submit to the committee that that is a real human story. It is not an isolated case; it is happening all over the province.

Conclusion: We believe, with the information we have provided to this committee, that a closer look must be taken at the honourable minister's proposed gutting of Bill 208. We have outlined to this committee how important it is that the certified members of the joint health and safety committees have the individual right to stop unsafe work without the economic implications of the companies stopping pay.

We have shown to this committee how the minister's obscure and confusing definition of "activity" will only create more havoc in the workplace. The Ontario Labour Relations Board has already supported labour's concerns surrounding repetitive strain injuries. Ministry of Labour inspectors are presently supporting corrections to specific work activities that will cause repetitive strain injuries.

Bill 208, as proposed in the first reading by Greg Sorbara in January 1989, confirmed that the Minister of Labour and the provincial government agreed that legislation must be adopted to deal with workplace repetitive strain injuries. Workers' Compensation Board statistics indicate the need for more progressive legislation in the field of repetitive strain injuries. Do not allow the minister to modify the intent of this specific section of the original legislation.

We have also shown this committee circumstances where the internal responsibility system is not functioning. The honourable minister keeps insisting on placing more responsibility on a presently inoperative system.

We ask the committee to review Bill 208. Look at labour's amendments as proposed by the London and District Labour Council. In the province of Ontario we need more progressive health and safety legislation. Workplace deaths and injuries must be reduced. Through the Minister of Labour this burden has been put on this committee's shoulders. The reporting of your recommendations will influence the health and safety of the workers in this province for the next decade and beyond. Thank you.

The Chair: Before you start, there are five minutes left for an exchange, so you can use up whatever time you want or you can allow for an exchange.

Mr Ashton: Before I turn it over to Bill Francis, I noted at the start, Mr Chairman, you indicated that this committee would not be

influenced by this, that or the other thing. I noticed with some concern yesterday in one of the newspaper articles, in Kitchener I believe, that it basically appears that Mr Phillips is saying that this committee is nothing more than a travelling road show and that in fact the legislation is determined to go ahead. I hope that what you stated at the start is the truth and that in fact you will give our concerns very serious consideration. I guess we will be able to judge that by the decision that comes down from your committee.

Mr Francis: As a health and safety representative and an instructor in occupational health and safety, I would like to say that what is happening to Bill 208 should not be allowed to happen. We need to have Bill 208 strengthened, not made weaker because business does not like it.

One thing that needs to be made stronger is the right to refuse to do unsafe work or work on unsafe equipment. This idea of only allowing the worker to refuse in the case of imminent hazards or threats is like saying or is saying you cannot refuse until you cut off your finger, hurt your back while lifting or after you have been killed on the job. Workers need the right to refuse long before this ever happens.

Bill 208 will cause two members from the joint health and safety committee to become certified to be able to shut down unsafe work. These two members will be one from the company and one from the union, and hopefully with the workers choosing the workers' side, which is a must. It must be that the company cannot just come along and overrule the worker representative and start the work back up. This startup must be jointly agreed to or it does not start back up. If one is allowed to overrule the other one in a startup, this will only have a negative effect on the whole certification program. Companies only seem to be interested in profits and not in the lives of their workers.

We, the workers of Ontario, need to have a say in the workplace about our health and safety. The safety record of industry in Ontario is real bad. Just one look at the WCB claims will tell you this. In 1980, there was a total of 165,221 lost-time claims and in 1988, there was a total of 215,184 lost-time claims, which is an increase of 49,963 claims. Permanent disability went from 4,489 in 1980 to 9,428 in 1988, and that is an increase of 4,939. Between 1 January and 31 October 1988 alone the WCB has awarded 231 fatality claims.

The above should begin to tell you that the workers in Ontario need the right to refuse unsafe work and to be able to refuse to work on unsafe equipment with no reprisals from their employer. They should also be paid for this job refusal. Also, no worker should be made or even asked to work on a job that has been refused. Only after the job has been investigated by both certified members and found to be safe can the job be allowed to continue.

The joint health and safety committee should inspect the work site or workplaces at least once a month and every month. This should be done with no time limits placed on it, and having the committee to have their joint committee meetings once a month. They should have the right to investigate all accidents, not just the critical or where a worker has been killed, and they should be paid.

All workplaces in the province of Ontario should come under the Occupational Health and Safety Act, offices included. Joint health and safety committees should be required in all workplaces with five or more employees. The committees should be structured so the management cannot veto anything that is put forth. This can be done by having the committee made up of one more worker than management.

If the committee makes any recommendation, the company should be made to give an answer in writing within 10 working days as to whether the company is going to put the recommendations in and, if not, why it is not going to. Once the company says it will, a time limit must be put in place. Also in workplaces with 20 or more employees, the committee shall be two from management and three from the workers, and if fewer than 20 workers, one management and two workers.

To ensure that the act is being followed, there should be more inspection by the Ministry of Labour inspectors. The company should not be warned of these inspections. If an inspection has revealed an infraction of the act, an order to correct this infraction should be made only once, and if the order is not carried out, charges should be laid.

The fines should be raised to \$500,000 with a two-year term in jail for any corporation that is in violation of this act. If there is a fatal accident in a workplace and it can be shown that management people were at fault, then they should receive a longer sentence.

0940

As I said earlier in this brief, I teach level 1 and level 2 plus the workplace hazardous materials

information system, WHMIS, for the education department of the United Steelworkers of America and for the Workers' Health and Safety Centre. Some of the things my students tell me that happen in their workplaces tell me that the system is not working all that great now.

One of the things I have heard is, "If you job-refuse, we will tell your fellow workers that only you will get paid and not them." In most cases, the worker will not refuse. One other time, a worker refused and the company put another worker on the job and said nothing. When I heard about it seven months later, it still had not been looked at. I told the workers in both cases to call the Ministry of Labour. I was even told of a critical accident where the company had cleaned up the blood and the missing fingers and said nothing until the next day. In another case, the workers were doing some welding and they were standing in water to do this. So when they job-refused, they were let go, with the reason being given that they were probationary employees and did not work out. I could go on.

For the reasons I have mentioned, the certification of workers to be able to shut down unsafe equipment or activity was good news, but it should be that the company cannot just come along and start it back up again. As I said before, this startup should be agreed to by both sides, and if they cannot agree, then a Ministry of Labour inspector should be called in to settle it.

It is also unfair to be able to remove the certification of just the worker member and not the management member. If this is going to be done fairly, it must be done to both sides. This should not be done until a hearing has been held and appeals allowed to be heard. The reason for this also is because if only the workers get theirs removed, the company can say—and this is more likely to happen in a small shop or a nonunionized place—"If you shut it down, we will see about getting you decertified." This will leave the door open to charges. With that hanging over the workers' heads, the workers in the small shops and nonunionized places will be less likely to shut down unsafe work conditions.

For the reasons I have talked about, I am recommending that: (a) the right to refuse unsafe work or activity remain in the act; (b) all joint health and safety committee members be trained using the workers' health and safety levels 1 and 2 courses; (c) all workers involved in a job refusal be paid; (d) workplace inspections take place every month and the whole workplace be inspected each time with no time limit on this inspection, and to be paid for as time worked; (e)

the joint committee meet once a month every month; (f) recommendations made by the joint committee be answered in 10 days, and if not put into place, why not; (g) the companies are made to follow sections 14, 15 and 16 of the Occupational Health and Safety Act to the letter of the law, and (h) that personal protective equipment be used only until the hazard is engineered out of the workplace, and there must be a time limit put to this or companies will take for ever to do it.

In conclusion, I would like to suggest that Bill 208, which is now being proposed, be scrapped and you go back to Bill 208 as it was first introduced in the House with all the amendments put in that the Ontario Federation of Labour has recommended. If this is not possible, the bill should be dropped and done over again with full input from labour this time.

The Chair: Mr Francis, Mr BurrIDGE, Mr Ashton and Mr McLellan, the committee very much appreciates your brief. We recognize that you are an umbrella organization representing labour in this area, so we do attach a great deal of significance to your presentation. I very much wish we had more time for an exchange, but we must stick to the rules we have set upon ourselves. Thank you very much for your presentation.

The next presentation is from the London Chamber of Commerce.

[Interruption]

The Chair: Order, please. I thought we had an agreement and understanding that witnesses would not be harassed. Before we start this presentation, I really must insist that you allow people to make their presentations. They have a right to be heard, just as you have a right to be heard. So please, let's not harass anybody who has come before this committee at our invitation.

Gentlemen, we welcome you to the committee. The next 30 minutes are yours.

LONDON CHAMBER OF COMMERCE

Mr Johnson: First, I would like to introduce the delegation, but before I do that, I would like to thank you for the opportunity to speak on behalf of business in London and indeed for all of business in Ontario.

My name is Bruce Johnson. I am chairman of the board of the London Chamber of Commerce. With me today is Bill Darling, to my far left, who is director of employee relations at the University of Western Ontario and a member of the human resources committee at the chamber of commerce. To my immediate left is Jim Thomas, the

chairman of that committee, and he will be making our presentation for us. He is president of Thomas and Associates.

Before I turn the microphone over to Mr Thomas, I would like to say something. I appreciate your remarks, Mr Chairman, with regard to the fact that we have a voice here just like anyone else, but where typically in times like these we are diametrically opposed in some degree to labour, we are in fact in agreement fully on one point, and that is that the bill as proposed ought to be withdrawn subject to further amendments.

We have been studying the matter since June 1989, and indeed we are quite pleased to see certain amendments come into being as a result of second reading. However, we would propose further amendments for the sanctity and preservation of business in our province.

I will ask Mr Thomas to make his remarks directly to you, the committee members.

Mr Thomas: The London Chamber of Commerce represents 1,000 businesses in the London area and has 2,100 individual members. On a number of occasions, the London chamber has taken the opportunity to make its views known regarding Bill 208 and welcomes this opportunity to present its position to this committee.

The London chamber supports the underlying purpose behind the amendments to the Occupational Health and Safety Act. Improvement of workplace health and safety in Ontario is an important objective and we support this objective. However, we feel that the proposed amendments do little to achieve the objectives of improving workplace safety.

The proposed amendments extend the requirement for joint health and safety committees to a total of 50,000 businesses in Ontario. This implies that the continued occurrence of occupational accidents is a result of too few establishments being covered by the legislation rather than the effectiveness of joint health and safety committees in the businesses already covered. The amendments use a shotgun approach and substitute quantity of workplace involvement for quality of workplace involvement. Instead, the ministry should concentrate on the minority of industries and workplaces that cause the vast majority of occupational health problems.

The proposed legislation also imposes the election of a health and safety representative and members of joint health and safety committees on businesses with no history of workplace safety issues. Instead of encouraging joint responsibility, this provision of amendments provides a

polarization of the health and safety issue in the workplace by separating management from labour in an adversarial way.

The training given to health and safety inspectors by the government recognizes the complexity of making decisions in this health and safety area, yet the new legislation proposes to delegate this authority to people in each workplace who will have far less training than the most junior of inspectors.

The establishment of training programs by a central Workplace Health and Safety Agency will, by its very nature, have to be general and would likely provide little additional value in dealing with specific workplace safety issues at a particular establishment. The development of such programs through such an agency is likely to be slow and costly as well.

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The right of certified members of the joint health and safety committee to stop work, as envisioned by this bill, even with the changes proposed by the minister, brings with it the possibility of imposing costly shutdowns on an operation. Further, workers are already given the right to refuse work which they consider dangerous. The addition of the right to stop work, as provided by this bill, will only add to the confusion in the workplace.

Recent revisions in the right to refuse work and in the composition of the Workplace Health and Safety Agency announced by the minister are a step in the right direction. The narrowing of the definition of work activity to a current danger, such as lifting, is a step to reduce the confrontational nature inherent in this bill. The appointment of a full-time neutral chair and inclusion of health and safety professionals will reduce the adversarial nature of this agency. If such an agency is established, this is a better format for the organization than previously envisioned.

However, we feel far more research is required into the causes of workplace accidents before a broad-brush approach is applied as proposed by this bill. We respectfully submit, therefore:

1. That Bill 208, as currently proposed, be withdrawn. In its place, more effort should be placed on identifying individual establishments responsible for workplace health and safety problems and working with those organizations to improve their record. The mass training of certified members of joint health and safety committees, in our view, is unlikely to be a cost-effective method of reducing accidents in Ontario. However, if the bill is to be given

further consideration, we recommend the following changes.

2. Restore the exemption of retail shops, office and nonkitchen hospitality services. Millions of dollars will be spent by these enterprises complying with the requirement for certified members of joint health and safety committees, yet little or no reduction in the incidence of lost-time accidents or illness will result since only a tiny proportion of accidents occur in this sector.

3. Eliminate the requirement for a joint health and safety committee in all establishments between 20 and 50 employees. Concentrate on improving the health and safety performance of the minority of businesses causing the majority of problems. Establish, via regulation, a requirement for a joint health and safety committee only in firms where a history of problems occur.

4. Allow appointment of a health and safety representative and joint health and safety committee members by employers in nonorganized workplaces. Reserve forced elections of this representative for circumstances where a business has a history of recurring problems.

5. The individual right to refuse work adequately protects the worker from performing in dangerous circumstances. If a worker is in immediate danger, then certainly the certified member should be able to persuade the worker that he or she is in danger and should refuse work. There is no health and safety reason, therefore, to empower a certified member of the joint health and safety committee to stop work.

In summary, we urge the withdrawal of this bill because it is unlikely to provide a cost-effective method of reducing accidents and will only increase the cost of doing business in Ontario. It will cause additional barriers to the establishment of new businesses and impose new costs on existing businesses without achieving the goal of reducing accident levels in the workplace.

The Chair: We have a number of members who wish to have an exchange at the completion of your brief.

Mr Mackenzie: Beside you are 285 daisies, which are just this past year's toll of actual deaths in the workplace. It does not touch the number who have died and we have a sizeable number in terms of toxic substances and exposure to various chemicals or diseases such as miner's lung cancer and so on. Do you have any idea how many of those 285 daisies represent managers or owners in any of the establishments in the province of Ontario?

Mr Thomas: I do not have any idea of the number who are owners or managers, but I think we share the goal of reducing deaths in the workplace and whatever can be done in the format that we have discussed to reduce that is what we are after.

Mr Mackenzie: I guess the point I am making is that the people who are paying the price in terms of their health are the 285 workers. To the best of my knowledge, none of them, in terms of fatalities, are owners or managers or management people or chamber types at all. So the workers who are making the request for the changes are the ones who are paying the price, yet the people who seem to have the ear of the Premier (Mr Peterson) in this province are your organization.

Can I ask you also if you agree with the letter that went out on 2 March under the signature of Laurent Thibault, who I understand was the head of the chamber at the time? He points out in the letter, and I will only quote three or four lines from it: "CMA is very disappointed that your government decided to introduce Bill 208 without further consultation to try to resolve its major flaws...."

It goes on to list what you see as the flaws and then, in the very last paragraph, he says to the Premier: "I will be calling you early next week to arrange a meeting. I hope that changes to Bill 208 can be made before the ground swell of opposition by our members and others in the business community grows out of control." I would like to know just what "out of control" that ground swell means.

Given the fact that the amendments that have now been suggested cover almost every point that Mr Thibault made in his letter to the Premier—they are now the amendments that we are told we are going to get by the Minister of Labour (Mr Phillips) in this province—they have certainly listened to you. They have not listened to the workers who put those daisies on the table.

Why? And just what were you going to do in terms of a ground swell of opposition? And why are you now asking for even more, now telling us that the bill does not go far enough or the changes do not go far enough? At what point do the workers have some say in the legislation in the province of Ontario?

Mr Johnson: May I speak to that?

The Chair: Yes.

Mr Johnson: Your comments, first of all, reference a letter that we have not had any prior knowledge of. But I understand, taking your

opinion of the letter, that it is in support of our statement.

I would only urge you to consider the following: First of all, although I am clear that your opinion is that we are opposed to the position taken by labour, that is not the case. I want to make that quite clear. We believe that there is a need for strong legislation to protect workers in workplaces that have been proven to be dangerous in the past.

What the legislation now calls for, unfortunately, are proposals where small business people operating a mom-and-pop restaurant or a mom-and-pop variety store may in fact have imposed on them all kinds of burdensome, costly legislation by the provincial government.

We certainly are sympathetic to the 285 daisies that lie before us here today. We are not proposing any amendments that would alter the ability of labour to negotiate with the Premier and with this committee, as we have seen evidenced with these balloons and the tremendous showing of the labour movement here in this city. I think that is terrific and I urge them to continue the fight, because I work in an environment where in fact there tend to be accidents in a heavy industrial setting.

I encourage that legislation go forward allowing workers to protect themselves in those environments that have been proven harmful in the past. However, the legislation should not be imposed on those businesses which have not had any history whatsoever of any difficulties with health and safety. That is the problem.

[Interruption]

Mr Johnson: I am hearing some argument here about not reporting. I dare say should there be rampant problems in those areas that are not reported, we would have heard from them. We would have heard something.

[Interruption]

Mr Johnson: Mr Mackenzie, my point is directed to you. That is, I do not see any strong evidence whatsoever that would encourage or endorse that the legislation be imposed on those businesses which do not have any history of health and safety difficulties. That is our point.

Mr Mackenzie: There is a real problem with defining what is a good or a bad employer. We find that there can be dozens and even hundreds of orders in operations that are considered good employers and yet the workers have not been able to get the changes needed.

My final question is simply this: In 1979, when we were dealing with the current Bill 70, I

can recall the uproar at that time. The same groups, yours among them, that argued against Bill 70 and the right-to-refuse-work provisions, as limited as they are in Bill 70, predicted chaos, problems in the workplace and misuse by workers of the right to refuse.

We have had no evidence before this committee, including from management people, that any of that happened, and I guess my question is, why do you now think it is going to be so much of a problem with the right to refuse when in fact that did not happen after Bill 70 went through in 1979?

Mr Johnson: Before I turn it over to Mr Thomas, I would just like to ask Mr Mackenzie to consider one thing. Has this particular government given any consideration regarding the cost of implementation? Do I see any numbers coming forward as the estimates of the cost of implementation as it applies to businesses today? Before you answer that question, perhaps we could directly respond to your question.

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Mr Thomas: Again, our emphasis in the proposal that we put forward is to take a look at those employers who do have a bad record and place the responsibility squarely upon their shoulders. We do not see the kind of chaos that was predicted. What we do see is that this legislation is not going to lead us to the more improved environment for health and safety that we all want.

Mr Dietsch: I am interested in your comment with respect to the joint health and safety committees. I am curious about who you feel is best equipped to handle discussions on the workplace situation, whether they be on improved methods or making suggestions for improving some of the workplace scenarios. For example, small retailers were in this committee talking about improvements in grocery checkout counters, those kinds of operations. Who do you feel is best equipped to discuss those kinds of issues?

Mr Thomas: We feel there is a joint responsibility that falls on all participants in a workplace including management and workers. We think the formal imposition of joint health and safety committees on small employers is not necessarily the right way to go. To allow them to come up with their own mechanisms at work is what our suggestion is.

Mr Dietsch: The difficulty we have as a committee is in dealing with presentations that are put before us outlining—we are very well

aware of the number of deaths, the number of injuries, the number of repetitive injuries in workplaces. We support what you are saying with respect to the workplace people. I hesitate to understand what you are saying with respect to the participation in joint health and safety committees as being an onerous cost, and yet you recognize that the individual workers along with management in a joint partnership will improve the situation.

Where does the cost come in, in terms of having an individual who works in your particular business or other businesses that you represent, in terms of inspecting his workplace, in terms of outlining to management things that perhaps management, who are too busy running their businesses, have not had an opportunity to see, to have an opportunity of a stronger partnership in terms of the working forum in the workplace? I do not understand where you feel that is going to cause you a great onerous cost. Surely you must do a tremendous amount of training with individuals whom you employ on your work sites now, or do you?

Mr Johnson: I would suggest to you that the costs come in two forms. First, there is the direct cost with respect to training, which of course comes anyway. If a good employer is training his employees, obviously that is a cost of doing business, but not necessarily as imposed by the Ontario government. This is an added cost of doing business.

Second, I would point out that the hidden costs are associated directly with those people who are trained, presumably as good, active members of a joint health and safety committee, who are responsible, intelligent and rational in all of their deliberations.

[Interruption]

Mr Johnson: I am certain that I am hearing from a number of people who are all three of those things behind me, but the question I—

The Chair: Mr Johnson, please do not respond to the interjections. If you get into responding to them—

Mr Johnson: My apologies. I would propose to you, Mr Dietsch, the following: rather than put some punitive, regressive and negative legislation in place, has the government considered any kind of incentives or positives whereby those employers who do respond favourably to the kinds of things this government sets out are treated with a fair bit of incentive? However that may be worded or however that may be structured is entirely up to this government, but

the positive side of things, I think, is something that perhaps could be looked at in terms of modifying the legislation.

The real costs come in the form of the small business. Our primary case being made here today is the burden of small business in compliance with further legislation on matters that do not have any bearing whatever on their particular business operations.

Mr Dietsch: With respect to that, the training you do in your business now to train people on how to best handle the job that you are requesting them to do, those kinds of things I would assume are ongoing as you upgrade with respect to new technologies. Those kinds of things we are talking about with respect to health and safety are not that burdensome in addition to what you are already training for to cope with the high-tech approach. Yes, there are improvements for workers, places where management has made improvements, and there are reductions in WCB.

As you say, the costs of doing business are reductions in your particular businesses. I can understand if you say that you have not had a particular number of injuries and accidents on your particular work site, but there are a lot of work sites out there that are not perhaps as good as yours. The difficulty is trying to bring those in conformity with upgrading to the standard where you perhaps run your particular job.

The costs of doing business and making the workplace safer stop injuries, make for a safer, healthier, happier workplace, and in fact improve productivity. Those kinds of things have been demonstrated to this committee in the past. I guess I do not quite understand where you are coming from when you talk about an imposing of a great deal of costs.

Mr Johnson: Mr Chairman, with your permission, Mr Darling would like to address this.

Mr Darling: On the idea of an umbrella organization to which every employer in the province would send two representatives to be trained, and those individuals would go back into the workplace, it is our belief that would not have a significant impact on the safety record of that particular establishment and that it is an additional cost. As you have mentioned, a large number of organizations are already spending a significant amount of money on safety and workplace training, so that would actually be a duplication for those employers who are already spending a considerable sum of money.

Mr Dietsch: An enhancement.

Mr Darling: No, it would be more generic because I think you will find in the training of the

ministry inspectors that the workplaces are so unique that it is very difficult for them even to do an effective job on a lot of occasions. The generic training you are going to get from an umbrella organization is not going to effectively address that issue.

Conversely, in an organization where you send these two individuals back into it who are not responsive to the need for proper safety procedures and that type of thing, these two individuals are not going to have a significant impact on that. The ministry, and that is what we are advocating in those cases, should indeed adopt a program wherein if their records do not comply, it will deal with them very sternly. It has been brought to our attention on a number of occasions that orders are written, presented and not followed up on.

There is something wrong with the current existing procedures if those things are not being adhered to. There are problems with the current ways things are being managed, rather than introducing new concepts.

The Chair: Could we move on to Mrs Marland and give her a chance.

Mrs Marland: I think what you have just heard from the parliamentary assistant to the minister is a confirmation of Mr Mackenzie's statements yesterday that this is a travelling roadshow and that there will not be any changes to the legislation. The fact of the matter is that what you are saying this morning—

Mr Dietsch: That is not true at all.

Mrs Marland: Is it not great when you get interrupted by your own members?

The Chair: You should ignore the interjections too.

Mr Dietsch: I have learned from the group.

Mrs Marland: We do appreciate you being here this morning because it is important to hear from everyone who is affected by this legislation. We do have major concerns with the legislation. You have just made a comment about the fact that the existing legislation is not working, and that is one of the aspects that I have been asking people about.

We have heard horrendous examples of where workers are not protected in this province by the existing legislation. What I want to ask you is, since we all recognize that small business is the largest employer in the province and we also recognize that 70 per cent of the workers in the province are unorganized, what does the chamber of commerce feel about the fact that exempting the lower numbers of employees may

well be contradictory to the safety of workers as a whole? The fact is that the legislation is there to protect everybody, and if we start exempting lower numbers of employees, is that really counterproductive to the protection of workers, which I think all employers are interested in?

Also, when you talk about going after the companies with a bad history, which I think is a very good suggestion, do you think also that while we do that as a government—not “we” as a government but “them” as a government—we should increase the penalties? Is that a way of making it more enforceable?

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Mr Thomas: As I understand some of the amendments, the penalties are suggested to be increased and I think that one of the—

Mrs Marland: Do you support that?

Mr Thomas: One of the processes that occurs is that if employers are poor at safety, their costs of operating become more expensive, simply for things such as that. Increased fines and more diligent inspection on poor performers, and enforcement of the current legislation, is a route we should be going. With regard to very small organizations, often they are involved with people who are actually owner-operator workers as well, and to have an administrative structure we feel is probably inappropriate on that kind of a structure and perhaps does not lead to the goal of enhanced safety.

Mrs Marland: We are told now that maybe the figure is going to be 50. You see, part of the charade of these hearings is that we are talking in a vacuum. We do not know what the government amendments are, although I asked the minister to give them to us before we went on the road so the public would know what they were responding to. If it is 50, that changes the pictures quite appreciably for the kinds of people you represent.

The Chair: Mr Darling, Mr Thomas, Mr Johnson, we thank you for coming before the committee this morning. We appreciate it.

[Interruption]

The Chair: Order, please. The next presentation is from the Oxford Regional Labour Council. You would not want to cut into their time. The Oxford Regional Labour Council, please, and the Energy and Chemical Workers Union. This, I understand, is a joint presentation from the labour council and the Energy and Chemical Workers. Is that correct? It is now.

Mr Colbran: It is now. I think the chemical workers will have their own brief. We are sharing the time, I guess.

The Chair: Okay. Gentlemen, we welcome you to the committee. As you know, it is a 30-minute time slot, so for the next 30 minutes we are in your hands.

OXFORD REGIONAL LABOUR COUNCIL ENERGY AND CHEMICAL WORKERS UNION

Mr Colbran: Just an introduction: I am Wayne Colbran, the secretary treasurer of the labour council. I am also a member of the United Steelworkers, Local 918. On my immediate left is Gary Gray, who is the health and safety chairperson—

[Failure of sound system]

Mr Colbran: Can you hear me now? Good. I think I will let the gentleman on my right introduce the chemical workers people.

Mr Basken: My name is Reg Basken. I am president of the Energy and Chemical Workers Union. With me on the left over here is Dan Ublansky, our health and legislative coordinator. We will be presenting a brief immediately following the labour council, so we will introduce our subject at that point, if that is okay with you, Mr Chairman.

The Chair: But it is understood that this is a joint 30-minute presentation.

Mr Colbran: Yes.

The Chair: Okay.

Mr Colbran: Let me say at the outset that the Oxford Regional Labour Council appreciates the opportunity to present our views and concerns about Bill 208. Before I get into those, I would ask you to take note of the first page of our brief where I have given you a brief breakdown of the workforce in Oxford county.

As you can see, we have a workforce of 44,400 people in that county. The breakdown of the different jobs in there includes everything from retail to auto, textiles, agriculture, right up to the open pit mine quarry. The breakdown gives us a varied and different workplace in the county and it also gives us varied health and safety problems.

The labour council represents approximately 6,000 of those 44,000, or 13.5 per cent in that county is organized in the workforce. That tells us, however, that only 13.5 per cent of the workforce in this county have access to or the opportunity of training as it relates to the Occupational Health and Safety Act through the highly developed and recognized programs of the Ontario Federation of Labour.

Even with this training, our committees continue to have problems with management, so you can imagine the other 86.5 per cent of the workplaces in the unorganized and the problems they have.

Later in the brief, I will be presenting examples of some of the problems we have in the county. I will ask Gary at that time to present his part of the brief.

The labour council believes, with what we see Bill 208 has to offer, that the original bill while not 100 per cent what we wanted to see, did provide a number of important steps forward, including:

Joint health and safety committees in every workplace of 20 or more employees, including 30,000 office and retail establishments, and on construction projects expected to last three months; worker health and safety representatives in all workplaces of between five and 20 employees, or on construction sites with more than 20 employees but lasting less than three months; require co-chairpersons on the joint committees; require one-hour paid preparation time for all joint committee members for each meeting;

All medical surveillance requirements to become voluntary; duty of employers to pay costs including lost time and travel where a worker undergoes a medical examination required by law; the right to refuse unsafe work will include "activity" which covers repetitive strain situations and poor design; require a certified worker and management member in each workplace with special training; when members are certified, they will have the right to shut down an unsafe operation;

Establish a bipartite Workplace Health and Safety Agency which is responsible for overseeing all of the training and research moneys available to the present safety associations, the Worker's Health and Safety Centre, the two labour-controlled occupational health clinics for Ontario workers and any research project undertaken within the ministry or through grants to the outside; ensure more training for all in health and safety; increase the maximum fine to \$500,000.

Industry responded to Bill 208 with hysterical warnings of industrial chaos resulting from these amendments and the government appears willing to address these business concerns rather than the health and safety of our workers. In October, when the Minister of Labour brought Bill 208 back for second reading, he indicated the government essentially intends to gut some of

these important principles on which Bill 208 is based.

A neutral chairperson for the agency will undermine the bipartite labour management partnership supposedly promoted in this bill. The safety associations will determine their own representation on the board of directors, undermining the agency's authority and direction. The right to refuse unsafe activity will be limited to immediately dangerous situations only, and not to address long-term chronic repetitive strain injuries, a backward step from the present practice.

Construction sites of more than 50 employees will have a certified worker member, thereby excluding some 70 to 80 per cent of the sites from the additional training provided in certification. Pools of certified construction workers could mean that a certified member may not be familiar with a site or even be from the trade on a site.

The right to shut down a unsafe operation will be removed. Agreement between labour and management certified members may be required in good workplaces, something that already exists, and the intention is unclear in bad workplaces.

When Bill 208 was first introduced, there were some major concerns that it did not provide what was needed. After many meetings and arguments, our unions and their workers came to the conclusion that Bill 208, while not perfect, did provide some forward movement. After being promised that we would see Bill 208 passed and then to have the new Minister of Labour cave in to industry's demand to gut the bill, I can tell you that the workers of Oxford county have been given a very clear message by the Liberal government of Ontario.

That message is that the government of Ontario does not give a tinker's damn about the health and safety of the workers of Ontario, that the Liberal government like the Conservatives before it is completely satisfied with the alarming increase in occupational related deaths, serious injuries and disease in Ontario's workplaces.

Labour has proposed a series of amendments that would put Ontario in the forefront of occupational health and safety legislation. Incidentally, that statement is something that the new minister repeatedly likes to state throughout this province as he goes around, that he wants to put Ontario in the forefront and have Ontario's workplaces the safest, yet what he says in that statement and what he is doing with the amendments are two different things altogether.

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So far, the minister has indicated the acceptance of three amendments: an independent appeal system, clarification that the union or workers will select their own certified member, and a clarification that management cannot start up a job that has been shut down by a certified member. But if there is no right to shut down, this clarification is meaningless.

In addition, the following amendments are crucial to a well-functioning internal responsibility system and a safe and healthy workplace:

All workers must be covered by the act, including farm workers.

All workers must have a right to refuse and a right to shut down unsafe work, including firefighters, correctional officers, police and health care workers.

The agency is to be bipartite and to determine representation on all safety associations.

Workers must be paid throughout all legitimate refusals and shutdowns for health and safety reasons.

Employers should be prosecuted for taking reprisals against workers acting in compliance with the law.

Inspections must be of the entire workplace once a month.

All members of the joint committee should come from the workplace.

Employers should respond to joint committee recommendations in seven days.

Worker members on joint committees should be able to bring technical advisers into the workplace.

All chemicals entering Ontario workplaces should be required to be tested, and those already present without adequate information should be tested.

No worker should be assigned a job that has been refused for safety or health reasons until the problem is resolved.

The certified member should be able to issue provisional improvement orders to correct hazards that are not immediately dangerous.

The certified worker must investigate all complaints.

All appeals against actions taken by worker certified members should be dealt with by the Ontario Labour Relations Board or arbitration, not the agency.

Civil or administrative penalties issued immediately by an inspector in the workplace should be provided for in the act.

In the next few pages of the brief will be a few examples from our health and safety representa-

tives at our local plants, and I will ask Gary at this time to present the one that he has put in.

Mr Gray: First of all, I would like to thank the committee for the opportunity to present some of the problems that we see in Oxford county. My name is Gary Gray. I am the chairperson of Local 68 of your Local 636 in Woodstock and I represent 2,400 men and women in that particular local. It is my job as chairperson in the local to meet with our standing committee and discuss the problems that they have in their workplaces and to try to come to some type of solution to those problems.

I am not going to speak in general terms to a great degree. I am going to speak in personal terms because I believe that is what we should be looking at.

First of all, I am an active Canadian Auto Workers health and safety instructor within my local. I continue to have the opportunity to see at first hand how the Occupational Health and Safety Act is working in the workplaces of Ontario and of course the other acts in Canada.

I want to get specific here. Clause 14(2)(a) in the act states that an employer shall, "(a) provide information, instruction and supervision to a worker to protect the health or safety of the worker." Another section of equal importance states that an employer shall, "(c) acquaint a worker or a person in authority over a worker with any hazard in the work and in the handling, storage, use, disposal and transport of any article, device, equipment or a biological, chemical or physical agent."

I am very sorry to say, committee members here present today, that from my personal experience in the health and safety field the majority of companies in Ontario, and Oxford county included, violate these two important sections of the act repeatedly. A statement by the Minister of Labour indicates that he realizes there are many companies out there that are in violation.

Example one in point: a young maintenance worker employed at a company in Oxford county. Hyd-Mech Machines, in Woodstock, employed a young man who had only been employed at Hyd-Mech for a short time. He was given a maintenance task which required him to work off the floor level using a ladder. Without his knowledge, a crane was about to be used at the same time in that department.

I must point out that at no time was there any type of lockout system applied to the crane to prevent operation. There was never any information, instruction or supervision given to this

young employee by the management of the company or by the supervision. The result was the worker was crushed to death against the wall when struck by the moving crane.

In this particular workplace death, the company was convicted in court of violating the Occupation Health and Safety Act. The fine was \$13,000, but no jail term was given to the employer. This did little to compensate his wife, who relied on this man for everything in life.

Example two in point: We have received many complaints about health concerns at another firm in Woodstock, Amertek. This firm is involved in the use of isocyanates both in its painting operations and foaming operations. This particular substance has been classified as a designated substance in the province of Ontario regulation 455 since 1983.

Health problems when using isocyanates have, I think, as most of the committee members might know, had major work stoppages at two of Canada's largest aircraft suppliers, de Havilland Aircraft in 1986 involving 5,000 workers and McDonnell Douglas in 1988 involving 3,500 workers who left their jobs because they did not know what they were working with and the health concerns around those particular chemicals.

One has to look at this problem in two ways. Either at the particular plant in Woodstock, Amertek, the company knows full well that it was in violation of the law and is simply trying to get away without fulfilling its responsibility or, two, there is a thorough lack of education on its part towards the understanding of occupational health and safety and its regulations. Past experience and my personal opinion is that it is some of both.

The topic of concern for us in the workplace hazardous materials information system is next. These training programs, which are required under Bill 79 in Ontario, are designed to educate workers in the proper understanding of warning labels on controlled substances used in the workplaces and for information to be able to understand the meaning of materials safety data sheets to better protect themselves on the job. It never was intended to serve as a vehicle that there would be controls in place. It would serve as a vehicle to make workers aware so that they could take it upon themselves to protect themselves on a job if controls were not in place.

The problem we see here in Oxford county, and as I can see across the province, is one of inconsistencies. The program was designed to make workers aware of the potential health risk

associated with working with dangerous chemicals on the job. For the committee members' information, these substances and chemicals prematurely kill 6,000 Ontario workers per year. The National Cancer Institute of Canada and the World Health Organization suggest that these figures may be low.

The disappointing part about WHMIS is that many employers are simply not adhering to the law. They openly state, "I'll wait until I'm caught," as there is no fine presently in place to discourage this type of employer. The Ministry of Labour itself has stated that it is not going to go into any workplace whatsoever to find workers who have not already been in compliance with WHMIS. In many cases they will simply order that the employer start the program.

Others, like Volplex Ltd of Woodstock, make a mockery of Bill 79. The firm allowed a grand total of 30 minutes for this training to take place. This company uses many hazardous substances in its processes, and it definitely would take much longer than the company presently allowed before compliance with Bill 79 has been met.

The Ministry of Labour has been requested to visit this firm by the union. According to the information given to us by the union, the company promised more training for the workers. But as of today, we understand there were no ministry orders levelled against this firm for not following the requirements of Bill 79, nor were there any specific orders given to Volplex to retrain all workers at this plant in the proper understanding of labels or of material safety data sheets.

This leads me to our last point, the internal responsibility system. This system is supposed to be a method where both the workers' representatives and the employers' representatives can jointly address the concerns of the workplace and work together to find solutions.

The concern here is simple to recognize. The employer representatives on a joint health and safety committee rarely ever bring up health and safety problems. It is something like they do not even know they exist. Yet these people are the same ones who send our brothers and sisters to the hospitals every day to be patched up or notify wives and husbands that their loved ones were seriously injured or killed on the job.

Please, everyone wake up. If you do not have a good worker health and safety representative in your workplace who pushes for reforms, the battle is almost lost. You cannot totally rely on the Ministry of Labour for support. As it stands now in the province of Ontario, we have

approximately 287 inspectors. We have more inspectors in this province looking after the fish and wildlife regulations than we have looking after the workers in the province of Ontario. As I indicated, each inspector in this province has to look after more than 1,200 workplaces. How does the Liberal government expect one inspector to look after 1,200 workplaces?

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I believe that in many instances workers are looked upon as expendable items. When our bodies wear out and health is gone because of exposure to poor ergonomics and chemicals, it is time to get rid of us and bring in a new crop. This, believe it or not, is the attitude of many workplaces which still, in 1990, are trying to change the worker to suit the workplace rather than change the workplace to suit the worker.

There is no doubt in my mind that a shift in the balance of power in the workplace is required. Workers must have more say in the workplace in matters of health and safety. The balance of control has been in the employer's corner for too long. He has had his chance to slow the thousands of workplace deaths and injuries, yet instead of a light in the distance we see nothing but darkness. Please give us the necessary tools, education and equal balance of power to protect ourselves and our fellow brothers and sisters.

The Chair: Are we now going to hear from the—

Mr Colbran: No, we are not quite through with this one yet.

The Chair: Okay. I am getting a little nervous about the time.

Mr Colbran: Okay. We should have about five minutes, I think, and then ours is finished.

I have a couple more examples that I wanted to go through. The next example comes from Gord Smith, the health and safety representative at Ingersoll Machine and Tool Co. This plant employs over 250 workers in welding and machine work and is represented by the Steelworkers. The first example is from February 1988, when a group of workers exercised their right to refuse. The workers wanted adequate protection for working outdoors. The scenario here is that they are unloading tubing and the only protection they have are the beams above them that hold the crane. They do this day in and day out, all through the seasons and in all kinds of weather. Boots were the biggest thing, but they also wanted raincoats and just proper attire to fit the weather conditions.

The company refused, of course, and the Ministry of Labour was called in during the discussions. The company refused again to supply the proper equipment. The inspector told the company that according to the act, the company had to supply what the workers wanted. The company again refused. The Ministry of Labour then wrote orders. Because of the company's disregard of the law and authority of the ministry, something that could have been settled for \$40 ended up with that section of the plant being shut down for three days, men losing pay and the company losing money. I think maybe the gentlemen who were before me should take heed of that as to their cost-effectiveness.

In January 1990, over a period of two days, contrary to the act, two separate workers were disciplined for refusing to do unsafe work. When the first worker exercised his right, the supervisor sent the man home, saying to either do the job or get out. The next day the ministry was brought in, it was involved, and the company was given orders to restore the worker with pay, and the company again argued with the inspector. The very next day another worker refused unsafe work. He too was disciplined by suspension. Subsequently, the ministry was brought in again. The company again argued that it had the right to decide what was unsafe and what was safe. Orders were again issued. There was a total of 13 orders in two days over the same issue: disciplinary action against a worker for exercising his right.

In the five years that I have been involved with health and safety in Ingersoll Machine and Tool, I have been involved with approximately 50 work refusals. Time and again the company has shown disregard for the authority of the Ministry of Labour and no respect for the unionized health and safety people or workers. They have harassed worker representatives and workers. Only education by the union has been helpful.

The next example comes from Dennis DeGroote, president of the National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, Local 1859. This is something that has been going on in the plant where his wife works, dealing with exposure to isocyanates. I will not read the first paragraph, which gives you the effects of short-term exposure.

"This letter is written concerning my wife, Judy DeGroote, who is an employee of Hoover Universal, now known as Johnson Controls. She was employed there for 11 years. Please note that all respiratory symptoms at one time were felt by

my wife." These are the respiratory symptoms of being exposed to isocyanates.

"In early 1986 my wife Judy began suffering from what we thought was a bronchial infection. Judy visited our family doctor on a number of occasions and in fact was treated as such. After repeated occurrences we began to question that it could be the chemical TDI.

"In October 1986 my wife developed the same symptoms again. When we asked the company nurse and management if it could be the chemical TDI, their response was, 'Probably not; it's likely caused by the draughty environment in which you work.'

"Hoover's lack of concern prompted us to seek help on our own. Judy was seen by a London specialist, a Dr Morgan, in February 1987, and in March 1987 it was proven that she was sensitized to TDI. Since she was proven sensitized, the company made the choice to terminate her employment and file a workers' compensation claim on her behalf. Judy was compensated at that time and currently receives a small monthly pension of \$129.70. Judy currently is working at Mastico Industries and is on maternity leave.

"We feel that Judy's employer should or could have acted in a more responsible manner. By making us aware that it could have been the isocyanates, she could have avoided all the pain and suffering from February 1986 to March 1987.

"This is not an isolated case. This employer has in the past had a number of similar cases filed against them. Attached is a news report of one such case.

"We believe that stronger laws could reduce these tragedies, but with the gutting of Bill 208 we can only look forward to more of the same."

You can look through the report there. The report is of another woman, it was back in 1984, who went through the same problems, and it was eventually proven that she was sensitized to isocyanates. The company was charged and went to court, and it got off on a technicality. The last paragraph states why the company was let off: "During the trial, the company lawyer argued that the charge should be dismissed because the act refers only to occupational illness arising from industrial accidents, explosions or fire. Judge Graham suggested this section of the act be clarified."

In conclusion, I can say to the members of this committee, all is not safe or healthy in Ontario. One of the most repeated complaints we hear from our committees, and I can speak from experience here, being a plant chairman for 13

years, is that the managements of the companies we work at refuse to accept the importance of health and safety. The monthly meetings were just a matter of routine, nothing more. Committee recommendations were almost ignored until the ministry was brought in and orders issued. Management argued that costs to improve conditions were not profitable and often threatened to close the plant if pushed too far. The Oxford Regional Labour Council believes workers must be given more authority when dealing with the health and safety of the lives in the workplaces.

The original Bill 208 provided a framework on which these amendments could build a system that would stop the ever-increasing number of deaths, injuries and illnesses in our workplaces. This government would be sending a very clear signal to workers in this province if the final bill does not take us forward. The government will be saying that they, the government and employers, are prepared to accept one worker killed and more than 1,800 workers injured every working day as a standard of doing business in this province. We have waited 10 years for this reform and we need safe and healthy workplaces in Ontario.

The Chair: We have about five minutes left. You can either give us a summary of your brief, Mr Basken, or you can consider it a written submission and have five minutes' exchange with the committee. It is entirely up to you.

Mr Basken: We will just make a few comments, Mr Chairman. Our union is a union of 35,000 people across Canada, with many of its membership in the oil refineries, the chemical plants and natural gas systems, and we work in some of the most hazardous situations in the country.

Nearly 20 years ago we negotiated the first language in respect to hazards and hazardous substances in the workplace and the worker's right to know. Of course, it took a five-month strike to get the industry's attention before the majors could even recognize that, and many of the minors have never come close to it. Many of the smaller companies have never come close to giving recognition to workers' rights to refuse or workers' rights to know the hazardous substances that they work with and the hazards that they cause.

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I appeal to you to make sure that the government does not neutralize this bill to the point that it is saying it is really not interested in the health and safety of workers in Ontario.

There is no question about it that there is a mistaken idea out there somewhere in this weird society that says there should be no requirement for people to do anything unless they have a bad record. Well, damn it, you will never find that they have a bad record unless there is a proper health and safety program that is involved. I just appeal to you to make sure that you do not allow the workplaces in Ontario to get to a bad record before you do anything about it. The requirement should be that we have a healthy and safe workplace and that we do not need a body count. We need responsible workers, trained workers and responsible managers to work together.

Dan Ublansky will deal very briefly, in our three minutes and all he can steal, with further things that are carried in our brief.

Mr Ublansky: I hope the members of the committee will take the time to look at our brief. We have given a lot of thought to the issues that the committee is examining. Unfortunately, we are not going to be able to deal with them in any great detail this morning, but I certainly hope that in your travels, somewhere along the line you will take the time to look at what we have to say.

I think in the time I have available I would just remind the committee that it is obvious what is driving organized labour's efforts for health and safety reform. You have heard the individual stories by Brother Gray, and all of those individual stories add up to 300 workers killed every year. That has been true since 1980, when the present legislation was passed—300 workers killed and 400,000 injured every year since 1980. We have all been living with that reality—all of us—for the last 10 years, and prior to that as well. I think there is a sense of frustration that has built up among everyone, not just labour, not just management, not just government. I think it is shared by everyone in this province.

As a reflection of that, I commend you to look at the quotation and at the document in which it appears. That is advisory memorandum 8611—it is quoted on page 4 of our brief—which is a document that was prepared by the minister's own Advisory Council on Occupational Health and Occupational Safety in 1986. I will just quote from that document, because I think it does reflect the general feeling, if you like.

"The promise of an improvement in the future wellbeing of workers implied in the Ham royal commission report has, for the most part, gone unfulfilled. Accident and fatality rates reported by the Workers' Compensation Board remain intolerably high. Ministry of Labour inspectors

write thousands of orders every year to correct violations of the act and regulations. This apparent lack of measurable progress at the shop floor level is evident also in the results of the advisory council's survey of joint health and safety committees.

"Although there may be room for some debate about the conclusions to be drawn from the data, it is clear from the survey that the committee system, as established under the act, is not adequate. Furthermore, there is no consensus that the internal responsibility system is functioning effectively or that, alone, it can realistically be expected to act as an instrument of change."

That is from the minister's Advisory Council on Occupational Health and Occupational Safety.

I think in the face of the evidence that has been accumulated and is still accumulating this day, this minute, this hour, it is impossible to say that there is no need for improvement in the health and safety conditions of Ontario's workplaces. Everyone agrees that is the case. In fact, this particular government has been saying that for the last three years now.

Mrs Marland It is an eternity, I believe.

Mr Ublansky: What we have finally produced as a result of those three years of effort is Bill 208 as originally presented in January 1989. I think workers in this province believe that Bill 208 is a start. It is a useful start. It moves us forward in some crucial areas. It is not everything, it is not ideal, it is not a panacea, but it is a start. Hopefully, we can build a more solid foundation from that start, but at the very least, give us that foundation. Do not take away the essential ingredients that will give us at least the opportunity to begin.

I keep using those words because that is all it really is. Nothing is going to happen overnight, but at least give us some tools that we can use in forging a new beginning and in trying to make an assault on these appalling, unacceptable figures, because they are more than figures; as the brothers have said, they are people. How many more ruined lives, how many more fatalities are we going to accept until we finally take meaningful, realistic action that will actually translate itself on to the shop floor? That is what we need. That is what we have to have. It exists to some extent in the province. We need it everywhere.

The Chair: I do indeed wish we had more time. Mr Colbran, thank you for your brief and the specific examples contained in it. It is helpful. Mr Basken and Mr Ublansky, your

brief, I assure you, will be read. Lorraine Luski, who sits to my left and is the research person with the committee, summarizes all the recommendations, and they will be contained in the summary that will be presented to the committee before we start clause-by-clause, so your brief will be considered. Thank you very much.

The next presentation is from Dow Chemical Canada Inc. Welcome to the committee this morning. We look forward to your presentation. I think you know that for the next 30 minutes we are in your hands.

DOW CHEMICAL CANADA INC

Mr Fullerton: Thank you very much. May I introduce our team? I am Ted Fullerton and I am the safety manager for Dow Chemical Canada Inc. This is Dr Ron Egedahl, who is the director of occupational health for Dow Chemical Canada Inc.

Just by way of introduction, let me say that our presentation today is really in two parts. I am going to talk a little bit in an introductory way about some of the thoughts we have in Dow Chemical about managing safety and obtaining results. Then Dr Egedahl will comment on some specific concerns we have with respect to Bill 208.

The Dow Chemical company and its Canadian subsidiary, Dow Chemical Canada Inc, have for years been dedicated to the achievement of excellence in the safety and health of its employees. One of our core values identifies this area of our business as one of the vital factors that overlies all of our activities. In Dow it is simply not acceptable to do anything in a manner that can lead to the injury or illness of either our employees or any other persons on or off our property.

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This fundamental belief is translated into strong safety performance through management team leadership starting at the level of the president and carrying down through every layer of supervisory responsibility. The results are a company which is an acknowledged leader in safety performance in one of the very safest industries in North America.

In Canada we have almost 4,000 employees and have experienced only two lost-time injuries since December 1984. One of these was a motor vehicle accident in 1987 and in 1988 we had a manufacturing accident. All of our five manufacturing locations in Canada have current injury-free records ranging from two million to 10 million hours.

It is from this background that we can say with considerable conviction that the management principles and technologies of accident prevention are today well established, readily available to anybody wishing to use them and proven in their ability to significantly reduce accidents in the workplace.

Our success in safety at Dow is due to the existence of four vital elements: strong management commitment and leadership, line responsibility for safety, employee involvement and teamwork. I want you to note that none of these was invented at Dow. In the field of safety management, it is widely accepted that each of these elements plays an essential role in accident prevention. The corollary is also true: If you remove any one of them, the probability of success is greatly reduced. At Dow these elements have become a deeply ingrained part of our organizational culture.

I want to comment on each one of these, starting with management commitment and leadership. This begins, first of all, with a genuine belief on the part of management that all accidents are preventable. Top management's policy statement states this and thus establishes the expectation that accidents will indeed be prevented. Members of management at each of our locations sit on management safety councils with responsibilities to direct the safety program, establish the management systems required to eliminate hazards and to protect employees from those hazards which cannot be totally eliminated.

Minimum requirements or standards are established by these councils and are enforced. Every employee understands that good performance in safety is required to achieve a good overall performance and this has a direct bearing on career growth at Dow.

On line responsibility, every supervisor is responsible for the safety and health of his or her subordinates, ie, anybody reporting to that supervisor. That supervisor understands that he or she has the responsibility for each and every one of the employees reporting to him and is responsible for establishing workplace standards and programs and ensuring compliance with those standards. At Dow we have staff safety and health specialists, and they exist to assist the line organization with their programs. The key point is that the responsibility for safety remains strictly with the supervisor and line management, not with the staff safety specialists.

Let me talk a little bit about employee involvement. In Ontario, Dow utilized the concept of employee safety committees in its

operating units long before the enactment of the Occupational Health and Safety Act. We also had created joint safety and joint health teams several years before this became a requirement by law. At our Sarnia division today, the co-chairmen of the joint health and safety team are full members of the sites' management safety council and thus share the responsibility for shaping the safety and health programs for the entire plant site. We continue to actively seek and develop new and innovative ways to involve more and more of the workforce in safety-related activities.

Last, I want to talk about teamwork. Two of our four manufacturing locations are unionized and two are not, but the spirit of teamwork on safety and health issues is a constant at every one of these sites.

Refusal-to-work situations and safety-related grievances are very rare. The words I have in this submission are not quite accurate. I had written, "None have ever required outside assistance to reach a resolution." I understand that we did have one incident last year involving asbestos exposure in the workplace and that did require assistance, so that statement is not quite accurate. We openly encourage our employees to have a questioning attitude and we expect them to refuse work if an unsafe or an unhealthy environment exists.

The supervisor plays an important role in providing the opportunity for each employee to participate as a member of a team. Without that supervisory support, it could be very difficult for most employees to become truly involved in the safety process. At Dow we expect our supervisors to seek out opportunities for each and every employee to play a full and active role in improving the safety of the workplace.

Now to summarize or to conclude my part of the submission, I want to offer these summary comments and general comments on the direction of Bill 208. We at Dow Chemical strongly share the Ministry of Labour's concern about the need to find ways to achieve improvement in safety and health performance in the province of Ontario, and to put it simply, there are far too many accidents occurring in our industrial establishments which can and should be prevented.

The intent and underlying principles of Bill 208, which is accident prevention through teamwork and partnership, are commendable, but the bill, as it stands, has serious flaws in it which could lead to confrontation rather than co-operation, and no improvement in overall

safety performance. Before discussing our specific concerns in the next section of this submission, we would like to offer these additional thoughts on the adequacy of this bill.

Bill 208 places considerable emphasis on the creation of new joint committees. It is our view that unless there is a balance established between these committees and management's accountability and responsibility to direct the safety and health program, the desired improvement in performance may not or will not occur.

A second point relates to the importance of having valid data with which to measure changes in performance. In the field of safety and health, it is time for the province of Ontario to adopt a meaningful system of injury and illness reporting. The present reliance on Workers' Compensation Board data is simply not an adequate indicator of performance. The Ministry of Labour has the opportunity, through Bill 208, to take a pioneering step in occupational health and safety in Canada by creating the first effective provincial system of measurement. We would be glad to elaborate on this thought, opposite measurement, at your convenience.

Now I would like to ask Dr Ron Egedahl, who is now Dow Canada's corporate medical director, to conclude our submission by describing our concerns with specific sections in Bill 208.

Dr Egedahl: Thank you. I will start off with some specific comments. First of all, the involvement of workers in industrial hygiene testing: This appears in sections 7 and 8. The term "consultation" requires a precise definition to ensure that there is no interference by worker representatives with qualified company specialists in the field of industrial hygiene. This is a very specialized field which demands extensive training to be able to make informed decisions on testing strategies.

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The requirement for a health and safety representative to be present at the beginning of testing is totally unnecessary and should be deleted from the proposed legislation. Not only is it impractical but it has the potential to cause companies to do less voluntary testing of the workplace.

We recommend that the legislation be changed so that the only requirement would be to provide information regarding industrial hygiene testing and testing strategies to a health and safety representative upon request.

The second comment deals with the Workplace Health and Safety Agency present in section 10. The makeup on the agency defined in the

current draft of Bill 208 is unacceptable. We support the changes proposed by the minister to include a neutral chairperson, two full-time vice chairs and four health and safety professionals.

However, these proposed changes do not go far enough. It is a fact that two thirds of the workers in Ontario are not unionized and it is absurd to ignore this majority group in the composition of the agency. It is equally important that the agency not be perceived to be a management-labour confrontational committee. Accident prevention has no sides.

Dow Chemical would be pleased to work with this committee to find a fair and suitable method for selecting candidates for this agency which will represent every interested group. We recommend that the legislation be written to avoid the use of the term "labour," for example, in paragraph 10(1)2. Substitute the word "workers" for "labour" as defined in section 1, paragraph 29 of the Occupational Health and Safety Act.

The third section deals with agency powers with respect to the operation of safety and accident prevention associations found in section 10. We believe that the province of Ontario has the best organized and most effective group of safety associations of any jurisdiction on this continent. The proposed legislation to empower the agency to "alter the rules of operation and change the organization of any association" is not warranted, nor is there any assurance that such powers would cause improved effectiveness of these associations.

We would encourage retaining the benefits of independent management thinking in these associations while striving to work more constructively with them to set the course for continuous improvement in accident prevention in Ontario.

The fourth point relates to accreditation of joint health and safety committee members present in section 10. The accreditation requirements for members of the joint health and safety committees should be modified to allow employees who are qualified as a result of experience and previous training to apply for accreditation. Many companies such as Dow have no difficulty in identifying competent people to work on joint health and safety committees. In-house and external training programs and the opportunity to serve on safety committees provide excellent credentials for joint committee responsibilities.

The fifth point is stop-work in section 23. As explained in our introduction, Dow has for many years actively trained our employees to refuse to do work that they consider to be unsafe. This support for the employee has served both the

individual and the company well in the search for excellence in safety.

We believe that the concept of the certified worker having the right to shut down a job in unnecessary and, in the case of continuous processes in the chemical industry, absolutely unacceptable. Steady-state operations are the safest. In the case of continuous process, plants shutting down is not always the safest alternative. Thank you very much.

The Chair: Thank you, gentlemen. Mr Dietsch had a question.

Mr Dietsch: In relationship to your record, could you tell us at the committee level here, do you have a policy with respect to bringing workers who are injured on a particular job back to work and putting them on a different job? Do you understand what I am saying?

Mr Fullerton: Yes, I think I can respond to that by saying that that does happen from time to time. It is not a policy to do that. Our first and only concern is really for the welfare of the employee who is injured. So we are not concerned whether the employee is able to come back to—

[Interruption]

The Chair: Order, please.

Mr Dietsch: In respect of that kind of policy, are those accidents reported? If an individual is hurt to the degree where his medical doctor has said that he can come back to work and work on a light-duty job, is that injury reported?

Mr Fullerton: Absolutely. We have in Dow a classification of accident known as restricted work accident. It is not altogether that unusual for an employee to have an injury which can cause him to be limited in his ability to do the job that he normally would do, so that is a restricted work accident. We treat restricted work accidents with every bit as much attention as we do any other accidents.

Mr Dietsch: You talk about a management involvement, a "management safety council." I believe was the term you used. Are workers represented on that management safety council? Is it all management?

Mr Fullerton: In our Sarnia division, I made reference to the point that the joint co-chairmen of the joint health and safety committee are both members of the management safety council, so in that capacity there is worker representation on that safety council.

Mr Dietsch: There is one worker?

Mr Fullerton: Yes.

Mr Dietsch: One worker?

Mr Fullerton: Yes, that is right.

Mr Dietsch: Is he a union worker or a nonunion worker?

Mr Fullerton: He is a union worker.

Mr Dietsch: Thank you.

Mr Wildman: You made reference to the record of two lost-time accidents. Can you confirm that one of those accidents was experienced, indeed, by a supervisor who was working on a pump during a strike?

Mr Fullerton: That was one of the two, as a matter of fact.

Mr Wildman: You indicated earlier that a supervisor is responsible for the health and safety of all of the people who report to the supervisor. In that particular case, who was responsible for that supervisor's health and safety?

Mr Fullerton: His department manager.

Mr Wildman: What action was taken with regard to his department manager sending him to work on a job he obviously did not know how to do or was unqualified to do?

Mr Fullerton: No, that really was not true. The instance that you are talking about was an equipment failure that caused this fellow to suffer a burn injury. The real learning experience from that had to do with the preventive maintenance programs related to that piece of equipment that failed.

Mr Wildman: Okay. Just two other short questions—

Dr Egedahl: There is one other point to raise with that, if I may. That individual happened to be working in that job before he became a supervisor. I mean, this was not an unusual job for him. He had been in that plant for many years' duration and was very familiar with that operation. This was not a stranger to that plant or to that particular operation. So I do not know what you are driving at, but I think you may have misinformation.

Mr Wildman: Well, I was asking for information. I appreciate your clarification, but you do confirm that this was indeed a strike situation, and this supervisor was doing work that would have been done by a worker who was on a legal strike at the time.

I would like to ask a couple of other questions. I commend you for your concern regarding the unorganized workers in Ontario and the need that they be properly represented. In that regard, on the agency, would you as representatives of

business and management agree that it might be acceptable for you people to have unorganized workers take up some of the positions set aside for management in the agency?

Mr Fullerton: We would not have any problem with that at all. I think the real point here is that there are an awful lot of people who work, who have jobs, who are being injured, and there really is a need to hear them. They must have a voice in what is going on. We really have no great bones to pick about the relative numbers, because it really ought not to be a we-they kind of committee. It really needs to be—

Mr Wildman: But if it were 50-50 organized labour and management, you as a representative of management might be prepared to give up some of your positions to unorganized workers?

Mr Fullerton: Well, that is a possibility. I had really not even considered that idea, but what the heck. It sounds like a reasonable suggestion.

Dr Egedahl: I am sure that organized labour would want to give up some of their positions as well.

Mr Wildman: In regard to that, a final question. Would you agree that workers, whether organized or unorganized, should be the ones themselves who determine who represents them both on the agency, on the joint health and safety committees or to become certified worker reps?

Mr Fullerton: I think that is a good principle.

Mr Wildman: Surely it should be a democratic process, and it should not be management choosing qualified people in the firm?

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Mr Fullerton: I would agree with that. I think it is very important that the workers actually select their—

Mr Wildman: I misunderstood you before, in talking of the interference from worker reps who might not have the information that your hygiene people have.

Dr Egedahl: I have got a concern that you have somebody on the workers' side who may have very limited training, a few hours of knowledge about industrial hygiene, who is now going to have some major input in the development of testing strategies. We employ industrial hygienists at a master level; they come from the University of Toronto. They have experience in industrial hygiene. They are the experts and the qualified professionals to lay out the testing strategy.

We welcome input and we welcome worker involvement, but I just have an objection when it

gets to the point that perhaps this worker representative is going to have some final say or be a major voice in this decision-making process. I think that is an imbalance. It should be the qualified professional industrial hygienist who decides upon the testing strategies. We have difficulty as well about sharing the data that come out of that, or sharing the testing strategies.

As I say, we welcome worker input, but it struck me in the way that the proposed legislation was written that this worker representative is going to have a major voice or a major say in this, and I think that is a problem.

Mr Wildman: You are suggesting if that is the case, then companies might do less testing?

Dr Egedahl: If you have situations where you are doing voluntary testing—in Dow we have strong industrial hygiene staffs at all of our sites. Almost all of our testing is done on a voluntary basis. I do not think we would change based on the legislation that comes in, but I could see some companies saying: "Why bother with this? Why have the bother of having this worker representative present when the testing starts, involving that person in the strategy? We will just do less testing." That is a concern to me.

The Chair: Thank you. Mrs Marland had the final question.

Mrs Marland: It is interesting to hear your comments today because we have heard from Dupont and CCL, and it seems that what you are saying here today is so similar to theirs that in your particular industry you do not require additional legislation because you could not afford to operate unsafely.

Mr Fullerton: That is a good way of putting it. The chemical industry recognized 10 or 15 years ago that there is really only one way to run your business, and that is the right way. That has to do with whether it is spills, whether it is injuring people or causing illness. It is a philosophy.

Mrs Marland: It was good to hear your comment in response to Mr Wildman that you do agree with worker selection from that perspective.

Mr Fullerton: Oh, absolutely.

Mrs Marland: I think that is very fair.

Mr Fullerton: Absolutely.

Mrs Marland: Thank you.

The Chair: Thank you. Mr Fullerton, Mr Egedahl, we thank you very much for your presentation to the committee.

Mr Fullerton: Could I make just one final comment?

The Chair: Yes.

Mr Fullerton: I talked a little bit about the importance of society knowing its injury record and needing a better measurement system. I just wanted to elaborate by referring to a document that I have carried with me. This is a document published by Statistics Canada, and it is really a statistical summary of the injury experience in Canada. It is not Ontario, but it is the injury experience in Canada over three years. Incidentally, in 1988 there were 618,000 lost-time accidents in Canada.

The point I wanted to make here was that in an introductory paragraph written by whoever in Statscan—I will just read it to you, it is very short: "Approximately one million Canadians are injured every year in work-related accidents. About half of these injuries are sufficiently severe that employees need to take time off work to recover."

The point I wanted to make here is that I think that is a very inaccurate statement. In 1988, as I said, there were some 620,000 or whatever lost-time accidents. The experience in the United States, where they do measure accidents to a finer level—they measure accidents that involve medical treatment, for instance—the ratio between medical treatment accidents and accidents which cause lost time off the job is four to one.

I would suggest that Statscan really does not even know, and perhaps we do not know in society, how many accidents we really have, but I suspect that the number is more like 2.5 million accidents. We have a huge problem on our hands and an opportunity to do something about it. In that regard, we are in full agreement with all of the other presenters today in our quest to find ways to reduce the number of accidents. But it is very important to understand what our experience is, and today in society we do not know that.

The Chair: You have added on to your brief, in effect, and there has been a request for a question based on that.

Mr Mackenzie: In terms of proper reporting of the number of accidents, I would like to know also if in fact your record—and I commend you for a better record than some companies have shown appearing before us—whether or not your figures for accidents at DOW include or exclude contractors working on site. I am told there are a number of accidents there that I do not think are included in the figures you gave us.

Mr Fullerton: I am very glad that you asked that question. In Dow, we have a developing

philosophy. It started in 1984 and our philosophy today in 1990 is that we exercise as much concern over the safety performance of contractors who work for us around the world as we do for our own employees. We are not as successful, I might say, with our record with contractors as we are with our employees, but that is something we are working on.

Mr Mackenzie: But you have not included those accidents in the figures you have reported?

Mr Fullerton: No, that is correct. We are just talking about Dow employees. That is correct.

The Chair: Once again, Mr Fullerton, Mr Egedahl, thank you for your presentation.

Mr Fullerton: You are very welcome.

The Chair: The next presentation is from the corporation of the city of London.

Gentlemen, we are glad to be in London and I hope that you are glad to be here before this committee. If you will introduce yourselves, we can proceed.

CITY OF LONDON

Mr Rowe: My name is Ross Rowe. I am the director of personnel for the city of London. I am a stand-in on your agenda. Steven Bahm is helping another arm of the government. He is on jury duty and has been for the last two weeks so he is tied up. On my left, I have Andrew Cooper, and on my right—I had better look—Dave Howard.

On behalf of the corporation of the city of London, I would like to thank you for providing us with the opportunity to speak to the proposed amendments to the Occupational Health and Safety Act outlined in Bill 208.

The corporation of the city of London is a major employer in this community with 1,500 full-time staff and up to 200 part-time staff during peak season. As a corporation, we are responsible for road and sewer maintenance and construction, pollution control facilities, sanitary landfill, solid waste collection, a 375-bed home for the aged, fire services and administrative services.

Let me begin by stating that London's city council at its 8 August 1989 meeting directed the city administrator to prepare a submission to the Honourable Gerry Phillips, Minister of Labour. The submission endorses the intent of Bill 208, An Act to Amend the Occupational Health and Safety Act and the Workers' Compensation Act, to reduce workplace risk, injury and illness. Council also directed the city administrator to voice an objection to three proposed amend-

ments. I will be addressing council's concerns first, followed by additional comments expressed by our administration. Unless otherwise stated in the brief, the sections referred to are contained within Bill 208.

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City council has voiced concerns relating to (a) section 11, which proposes the removal of worker participation in medical surveillance programs; (b) section 19, which proposes the addition of work activity as a criterion for refusing to work; (c) section 20, which proposes granting certified members of joint health and safety committees the authority to issue a stop-work order.

First, section 11: We respectfully request the retention of clause 17(1)(e) of the Occupational Health and Safety Act requiring worker participation in prescribed medical surveillance programs.

Employers and supervisors are held accountable for the health of workers exposed to regulated designated substances. Participation in medical surveillance programs provides important information to the employer, the joint health and safety committee and the Ministry of Labour in regard to a worker's fitness to work with specific designated substances. In a workplace, engineering controls, safe work practices and the use of personal protective equipment all aid to reduce exposure to occupational hazards. Participation in medical surveillance programs aids in determining and controlling the sources of occupational hazards.

In conclusion on this section 11, for many occupational health exposures, medical surveillance is an important component in a complete health and safety control program. The province should have the latitude to require medical examinations in appropriate circumstances.

Second, section 19: The definition of "work activity" has not been clearly defined in the amendments. It has been suggested that "work activity" will be interpreted to include any task a worker is about to undertake or is undertaking; for example, lifting a heavy object. The words "work activity" where they appear in the amendments to subsection 23(3) of the Occupational Health and Safety Act, could be interpreted, along with the current criteria for initiating a work refusal, to include any reason relating to health and safety.

If the intent of the inclusion of the term "work activity" is as a catch-all phrase for refusing to do any type of dangerous work, why make an addition to subsection 23(3) of the Occupational

Health and Safety Act? Why not change the criteria as a whole? Such a change could be stated very generally as follows: "A worker may refuse to work or do particular work where he has reason to believe that he is likely to be endangering himself, or his actions are likely to endanger another worker."

Having stated this, we would also like to make it clear that we favour the restriction proposed by the government after second reading of Bill 208 in regard to the imminence of danger. In this proposal, the government has suggested that the term "work activity" be more narrowly defined, "making it clear that the right to refuse is restricted to current danger, and to deal with the longer term 'ergonomic' concerns through the joint health and safety committee." We feel that a similar restriction could be included in our own general statement on the refusal to do unsafe work.

Any changes to subsection 23(3) of the Occupational Health and Safety Act would naturally be reflected in subsection 23(6).

Third, section 20: Granting certified members of joint health and safety committees the authority to issue a stop-work order to the employer is unnecessary. Each worker currently has a duty to report any hazard to his supervisor or employer under section 17 of the Occupational Health and Safety Act and the right to refuse unsafe work under section 23 of the Occupational Health and Safety Act. An employee can stop work himself by demanding that the employer or supervisor take necessary precautions to protect the employee after reporting an infraction or hazard. The employee also may exercise his right to initiate a work refusal.

Employees likely to be endangered can be and currently are encouraged to take action either way by worker members of their joint health and safety committee. We support such stop-work provisions by each and every employee.

If the government is committed to maintaining the stop-work provision, it should do so without granting independent authority to a certified worker member. We support, therefore, the minister's revised approach, which recommends any decision to stop work to be done jointly by the certified management and worker member from the joint health and safety committee. We are reminded frequently of the overriding theme of the Occupational Health and Safety Act: joint resolution of health and safety concerns.

In addition to the above concerns previously expressed to Gerry Phillips, we would like to

submit a number of additional comments and concerns to this committee.

Subsection 1(6): As the corporation of the City of London, we favour the proposal limiting an owner from becoming a constructor by virtue of the fact that the owner has engaged someone to oversee quality control at a project. This proposed amendment relieves the concern of many municipalities that employ construction inspectors for the purpose of quality control on and under our own streets. Municipalities do not have the resources available to effectively ensure the responsibilities of a constructor are being fulfilled on the numerous projects funded and inspected each year.

Subsection 4(6): With respect to the requirement for the constructor or employer to respond in writing to any recommendations of a committee within 30 days after receiving them, we request this panel consider inserting the word "written" before "recommendations of a committee." As all committees are required to maintain and keep minutes of their proceedings, the constructor or employer should be required to respond to written recommendations of the committee as recorded in the minutes. Both parties of a committee want to ensure that an unedited version of their recommendations, as recorded in the minutes, reaches the appropriate constructor or employer representative for consideration and reply.

Subsection 4(7): Some workplaces are more administrative than production oriented; for example, office buildings. While we applaud the requirement for the workplace to be inspected in its entirety over a 12-month period, we respectfully suggest that the monthly requirement is not necessary in some workplaces. As an alternative, we recommend committees be granted the authority to reduce the number of inspections required to "at least once every three months," where the committee deems it appropriate. This suggested change would correspond to the existing requirement for committee meetings, subsection 8(11) of the Occupational Health and Safety Act.

We are next concerned with subsection 4(8). With respect to the proposed amendment, subsection 8(12) regarding one hour's entitlement by members of a committee to prepare for each meeting, it is unclear whether all members are entitled to the time and/or payment whether they meet to prepare or not. It is unclear who decides when the time will be taken. For example, is it the committee, the union, for its appointed members, the employer or jointly? We

suggest the amount and scheduling of preparation time again be determined by the joint committee.

Section 6 is another concern.

(a) We agree with the minister's proposed change to the Workplace Health and Safety Agency to add a full-time neutral chair and four voting members representing the health and safety profession. A neutral chair elected by the parties will ensure accountability and assist in resolving conflicts. The addition of representatives from the health and safety profession is a genuine attempt to safeguard the agency from losing sight of its most important function, which should be to reduce workplace illness and injuries. Input from grass-roots practitioners will ensure the agency, in its administrative capacity, can deliver the workable solutions required.

(b) Under the proposed addition of section 10c of the Occupational Health and Safety Act, we are concerned with subsection 10c(2) regarding method of collection of funds which, in turn, are transferred to the agency. Currently the Workers' Compensation Act does not permit the board to assess schedule 2 employers to fund safety and accident prevention associations. As a schedule 2 employer we are concerned with this inclusion. I am given to understand that the reference to schedule 2 had been an oversight. We request therefore the reference to employers in schedule 2 be removed from the proposed subsection 10c(2) of the Occupational Health and Safety Act before third reading.

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Section 9: We are concerned with the wording proposed in clause 14(2)(j) of the Occupational Health and Safety Act. I believe the intent of clause 14(2)(j) is to ensure occupational health and safety reports relating to the specific workplace the committee represents are received and action is taken. Some organizations, like the city of London, have diverse operations in multiple locations, requiring the need for more than one committee. Information from unrelated committees need not be shared.

Within the corporation we have a number of joint health and safety committees. One of these committees represents health care workers in our home for the aged, while another committee represents truck drivers, sewer maintenance crews, pollution control workers, mechanics and the like in outside works areas. The health and safety concerns of health care workers are very different from those of outside works employees. Inserting the words "in the workplace" after

"occupational health and safety" in proposed clause 14(2)(j) would resolve our concern.

Section 16: Workplaces are dynamic environments and the requirement for a floor plan showing the names of all hazardous materials and locations to be posted could prove onerous to maintain. The clause does not distinguish between the presence of a hazardous material, the amount and any potential exposure hazard. There should be some distinction between the presence of an ounce of mercury in a gauge and an open dip tank containing heated sulphuric acid.

The fire chief concurs that floor plans of hazardous materials are useful only if current. We would recommend that each area where hazardous materials are present be marked to identify the types of hazardous materials located therein by way of their respective WHMIS symbols. We would also recommend to let workplace joint health and safety committees decide what specific hazardous materials represent an exposure hazard and require further identification.

In summary, I would like to restate the Corporation of the City of London's support for the intent of Bill 208 to reduce workplace risk, injury and illness. We ask for the committee's consideration of our comments and suggestions for change outlined above. Thank you.

The Chair: Thank you, gentlemen.

Mr Wildman: Sir, could you characterize the city's record in relation to occupational health and safety? Would you say that you, while striving for a good record, have achieved a fairly good record?

Mr Rowe: I would refer the question to David Howard.

Mr Howard: I think, for the short term I have been with the city, and having had a chance to review the record and programs, certainly in some areas it is a little higher than what I had expected. I would not say it is the fault of training, but maybe of the workers not using the tools they were given. Maybe it is even our fault for not enforcing. Maybe that is where the fault lies.

If I can be more specific, if we look at sanitation, where workers are allowed to go home once their job is completed, meaning that in an eight-hour shift, if they can get their work done in four or five hours, they are allowed to go home at that time, because of that, they tend to hurry an awful lot and disregard safety rules. So in that specific instance, obviously we do have a higher rate of back strains, etc. But overall, I do

believe that our training is excellent. We tend to look at programs such as fire training, first aid training, trenching, confined-space training, etc. We are involved in that on a yearly basis.

Mr Wildman: Obviously, all of us recognize that workers are responsible for their health and safety and the health and safety of their colleagues, but the act also says there should be a competent supervisor with the responsibility to ensure health and safety in the workplace.

Can you confirm that in the last year, the Ministry of Labour has issued 50 orders to the city?

Mr Howard: I really cannot confirm the number. I do know there have been a fair number of orders issued.

Mr Wildman: I have a number of copies of them here. The top one, just by coincidence, since you mentioned trenching, deals with proper trenching. Perhaps if you could check the numbers, you could also inform the committee as to how many of these orders were repeat orders by the ministry.

Mr Howard: Again, at this point and, I will have to say, in my own ignorance to some extent, I have not had a chance to review all of the orders in total. Probably the main reason for that is that I have only been employed with the city for a short time, and coming into a new position, there have been an awful lot of things to look at and deal with immediately.

Mr Riddell: It was a good brief, with some thoughtful ideas. It begs a few questions, one of which is the makeup of the agency. In collective bargaining, is it not a generally bipartite relationship, management on one side, labour on the other?

Mr Rowe: That is correct.

Mr Riddell: There is no neutral chair. You might have to bring in a mediator if you reach a stalemate, but when you are bargaining, there is no neutral chair.

Mr Rowe: That is correct.

Mr Riddell: Then why, when this agency is sitting down and trying to find out how to properly educate and train workers, would a bipartite relationship not work there in the absence of a neutral chair? If you can come to an agreement—and I think normally you do, I do not think very often a mediator has to be brought in because you reach a stalemate—it is agreement between labour and management. I guess what I am saying is, why do we now need a neutral chair, when labour and management are sitting

down to negotiate occupational health and safety training?

Mr Rowe: As far as the city of London experience with joint health and safety committees goes, and I think that would be the analogy to negotiating, joint health and safety committees do work. As I understand the agency, it is over and above the joint health and safety committees, so therefore it is one step above in terms of reducing the risk in the workplace, and if that is the objective, I guess, of Bill 208, to establish this agency, the neutral chair obviously would help resolve conflicts. That is what we have said in our brief.

Mr Riddell: What I have heard is that labour and management may well not put their best effort forward in coming to some kind of agreement when they know there is going to be a neutral chair who will ultimately make the decision anyway. Is there anything to that?

Mr Rowe: Never having experienced an agency working in this capacity, it is hard to say. I think as far as a negotiation experience is concerned, that is not the case. I think both sides endeavour to effect an agreement. They know there has to be an agreement down the road and they do everything they can in their power to effect that.

Mr Riddell: Which is bipartite, right?

Mr Rowe: No, I am talking about if there is a third party involved. I am not saying they do not do it without the third party, but if a third party does get involved, that is the case.

The Chair: Thank you for that interesting line of questioning, Mr Riddell.

Mr Riddell: It all depends on what hat I am wearing at the time.

Mr Fleet: I found that the brief you made was very interesting, in part because it is one of the few briefs we have had that when there is a complaint raised, there is also some suggestion as to the resolution, apart from totally abolishing the proposed act. The two areas, though, that I wanted to seek a little bit of clarification on are covered in your brief. One of them is that you are suggesting that a schedule 2 employer ought not to be funding safety and accident prevention associations, and I guess my question is, why not?

Mr Rowe: That is by the special assessment funding. The schedule 2 employers do pay an administration fee to the Workers' Compensation Board, so we would consider it double taxation, because already the Workers' Compensation Board is funding these agencies.

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Mr Fleet: Okay. The other thing I was wondering about was your reference to section 16 dealing with hazardous materials. It is one of the few instances in your brief where you did not propose a specific suggestion that would resolve what you perceive to be the problem. I am not quite sure what it is you are suggesting the committee ought to do.

Mr Rowe: I think our recommendation is that if you are going to have a floor plan of hazardous substances, you should look at the volume and the type of substance. I think it is very important, and there should be perhaps some regulations with respect to the small amount of mercury versus the large dip tank of sulphuric acid.

But in addition to that, it could be very dangerous. We have discussed this with our fire chief, and he would consider it very dangerous if these floor plans were not kept up to date. He is very concerned about floor plans that are antiquated and not kept up to date, because if there is a fire, there could be disastrous results.

Mr Fleet: I am at a loss to understand what it is you would propose that a company would be doing. The object of the provision about a floor plan is that there is going to be a floor plan showing where there are hazardous materials, and it is supposed to be in a place that is likely to come to the attention of workers. I would have thought that the principle is quite straightforward: that if there are hazardous materials, particularly in a situation where an employee does not work in all parts of a given location all the time and might come on the site periodically, it is useful to have that there.

A company has surely got an obligation, if the materials are changed on the floor, to update the floor plan. What else do you do to bring to the attention of the people who are in the workplace where those materials are if you do not post a floor plan? How else are you proposing it would be communicated?

Mr Rowe: We are not denouncing the idea and we are not denouncing that it be posted. We are just saying that perhaps there should be some regulations with respect to what amounts of hazardous material should be recorded. Also, the matter of keeping the floor plan up to date is essential.

Mr Mackenzie: Following along on my colleague Mr Fleet's question, is the city of London now in compliance with the WHMIS legislation or not?

Mr Rowe: Yes, we are.

Mr Mackenzie: You are in compliance with it.

Mr Rowe: Yes.

The Chair: The final presentation of the morning is from the London and District Construction Association. Mr Dool is here, and colleagues. He is a former resident of Sault Ste Marie.

Mr Dool: And proud of it, are we not, Bud?

Mr Wildman: Yes, we are.

The Chair: Gentlemen, we welcome you to the committee and we look forward to your comments for the next 30 minutes.

LONDON AND DISTRICT CONSTRUCTION ASSOCIATION

Mr Dool: We appreciate the opportunity to be here this morning to address our concerns in regard to Bill 208. On my left is Frank Baratta. He is the vice-president of the London and District Construction Association. On my right is Ben Vreel, a member of the board of directors. My name is Tom Dool, and I am the general manager.

We are representatives of the London and District Construction Association, whose 450 members are the majority of employers employing the majority of employees in the construction industry in this particular region. Within the time allotted us today it would be impossible to address all aspects of the proposed legislation, so we therefore ask your indulgence as we address at length only those issues that we consider most negative.

As employers it is our responsibility, from whatever aspect you care to look, to provide safe and healthy worksites and conditions. Historically we have seen phenomenal improvement. More than 50 years ago the Construction Safety Association of Ontario was formed by employers. This association endured and was copied by other industries until it became the responsibility of the Workers' Compensation Board. Funding for CSAO is solely by employers through a surcharge of two per cent of WCB premiums, which is far higher than any other industry.

This particular system forces all construction employers to participate. It is through the CSAO that the partnership approach, as described by the Minister of Labour and his predecessor, is well entrenched in the construction industry through joint labour-management committees. We believe we are already accomplishing what the ministry proposes in Bill 208.

Complementary to that brief description is the record of construction safety in Ontario. I have enclosed a number of graphs that follow this particular page that you are looking at, which I hope you will take a look at and I hope will illustrate what I am about to say.

In all probability, Ontario has the best construction safety record in the country, measured in lost-time injuries per 100 workers at risk over a 13-year measurement period. That is from the Ministry of Labour document, which I am sure you are all familiar with by now, of August 1989. In fact, when LTI rates or fatality rates are compared with the United States, France, Sweden or Canada as a whole, Ontario has the best construction industry safety record.

Since 1965, there has been a 44 per cent decrease in accident frequency, a 52.5 per cent reduction in medical aid accidents and a 64.5 per cent reduction in industry fatalities. When you compare that record to other major industries in Ontario, the construction industry has had greater improvement in accident frequency than any other.

It is pertinent to say that safety is a top priority in the construction industry. Their record shows that. It is getting better all the time. We believe that there are four basic reasons for that particular improvement in safety over the past 25 years: the provision of safety education, training and research within a co-operative framework by the Construction Safety Association of Ontario; pertinent, productive and relevant legislation within the Occupational Health and Safety Act and its predecessor, the Construction Safety Act; committed, responsible and professional employers and employees, and finally, the accountability of employers to provide a safe and healthy workplace. That direct accountability is very important.

The partners in construction safety, employers, employees and the Ministry of Labour, all recognize these four factors as being pertinent and also recognize the most enviable record of improvement in safety which they, as partners, have accomplished.

However, in the face of this record, the Ministry of Labour has included the construction industry for coverage under all the provisions of Bill 208, a blanket coverage. By doing so, we believe the ministry has placed the success of the industry in this area of safety in jeopardy.

Certain portions of the bill will be counterproductive in regard to the construction industry. We address the agency itself. We believe that the agency is an unnecessary new layer of bureaucra-

cy that duplicates current safety initiatives in the construction industry and puts at risk the effectiveness of the CSAO, one of the major participants in the industry's past and current success.

The CSAO provides our industry with training for all workers, provides accountability to employers and employees, provides industry-related research and provides for the co-operative participation of all parties. The proposed forced partnership in this proposed agency/bureaucracy will result in a definite change in the controlling dynamics of safety in our industry. It will result in a movement away from the co-operative approach developed over the years and lead towards increased confrontation and reduced employer accountability.

By forcing a 50 per cent union representation on CSAO, the proposal extends the confrontation approach, excludes the majority of the construction workforce, those who are not unionized, and reduces the effect of the initiatives of the industry toward a co-operative and participative partnership in safety.

We propose that the ministry recognize the uniqueness of the construction industry, as it has in the past, and recognize the successes of the industry's constituents in safety. The ministry should maintain the accountability of the CSAO to the construction industry, where it belongs. When I say "industry," I mean all factors of the industry. The ministry should maintain industry-specific funding of the CSAO. Although higher than funding of other associations, it is absolutely necessary to have the CSAO directly accountable to the industry and not to a bureaucracy unfamiliar with the industry.

In summary, exempt the construction industry and the CSAO from this new agency and allow them to continue their past initiatives for a safe industry.

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The right of certified workers to stop work: Currently every employee in our industry has the right to refuse work that he or she considers dangerous. That is a very broad part of the act and it makes a great deal of sense. It is the individual who works daily and intimately with the materials, machines and processes of the industry. It follows that that particular individual is far more qualified to recognize danger than the person not having any experience within it.

We are deeply concerned with this part of the bill in that it lacks practicability. You cannot apply this part; it does not work. Indeed, it may

well promote a reduction in concern for a safe workplace among the parties.

How can an employee be sufficiently trained for judgements of the type proposed? It takes Ministry of Labour officials and inspectors years to achieve that particular level of expertise.

Will the appointment of a particular type of tradesman as a certified worker be recognized by the other trades? I am sure if you have any familiarity with construction you have heard of jurisdiction. We have 24 trades that we deal with on many projects. How do you pick one of those?

Will the individual employees refer their rights of refusal to the certified worker? Every employee has the right to refuse dangerous work, and our concern is an individual who is afraid he is going to get fired if he says, "I'm not working," so he is going to lean on the guy next to him, the certified worker, this special guy, whoever he may be, to carry out his rights. We think that is wrong.

Management could very well fall into the same type of trap and say: "Well, I've got a specialist out there in the field. He'll take care of safety." Is he going to start referring his rights, if you will, or obligations and responsibilities to the certified worker? We are not sure, and I do not think anybody here can say it for sure either.

Will this be a working employee or just a fellow walking around? What exactly can this certified individual contribute to safety on a job site about which he or she may know very little or with which he or she may have minimal experience?

Will ministry officials abrogate their decision-making authority and responsibilities, or indeed have their numbers reduced to answering emergencies?

Construction is not process or line oriented. It does not have a static workforce like manufacturing. In manufacturing it is likely that an individual can come to grips with the whole process of a line and be able to identify quickly those areas of short-term and long-term hazard. In construction there are some 20 trades, each of which is professional in its own area but rarely, if ever, knowledgeable in all, and each of which is onsite for a comparatively short duration. It is only at the upper levels of field management that the required experience, knowledge and consistency may occur. It is this group which currently has the obligation to shut down a work site and which does so on a sound basis.

The concerns listed above and others of which I am sure you have been made aware lead us to request that the construction industry be exempt from this provision of certified workers and their

proposed authority. We propose and we maintain that any reform legislation should build on that which has proven successful and progressive. Therefore, maintain the current rights of refusal and the accountability of employers for safety and stop-work orders.

Further, we propose a right to immediate conference between the employer, the employee and a ministry inspector, with emphasis on speed of reaction by the parties.

We propose an accelerated program through the Construction Safety Association of Ontario for all employees to inform them of their right of refusal, to train them to recognize dangerous work situations and to inform them of the actions required to work safely. That is being done. It is not being done to the extent to which it should be done.

We support the assignment of a ministry inspector to monitor the work site at the employer's expense as a result of consistently poor safety performance, and that safety performance must be defined in some way, shape or form.

Joint health and safety committees and trades committees: We support the minister's intent to expand the use of joint health and safety committees. Indeed, there is evidence that where the committee's goals are clear and where there is a commitment to carrying out the committee recommendations, the joint health and safety committees are very successful. Many employers in construction have instituted these committees voluntarily and indeed have found them of value. We propose to go one step further, that the appointment of committee members on the smaller sites be made by the employer when or if the election process fails.

We support the appointment of safety representatives on jobs sites of five to nine persons. However, just as there is evidence that all of the previous three measures are at least potentially successful, there is also evidence that where trades committees are part of the committee structure, safety results are reduced and the effects of the joint health and safety committee are inhibited. For those evidential reasons, we propose the deletion of the requirement of trades committees for the construction industry.

In summary, we are proposing the exemption of the construction industry from the safety agency, from the establishment of certified workers and their attached right to stop work and from the establishment of trades committees. We agree with the direction or intent taken by the ministry and therefore have put proposals for-

ward for consideration to achieve the self-regulation and partnership so desired.

The concept of exemption for construction is not new. There are many examples where, because of its uniqueness and differences, it has been found more practical and indeed successful to do so. Our proposals are more practical for the industry. They have a greater basis in fact and evidence than in experimentation and indeed have a greater chance of success.

In addition to these proposals, we recommend a monitoring and comparison of our safety record over a period of time to ensure that we are on the right track. We are asking, I guess, that you recommend that a system be put in place that we know has a good chance of working.

We ask that your recommendations to the House reflect our proposals and our desire to work with employees and government to achieve a safe workplace.

The Chair: On page 8 of your brief, you state, "there is also evidence that where trade committees are part of the committee structure, safety results are reduced."

Mr Dool: That is correct.

The Chair: Where is that evidence?

Mr Dool: I will forward that to you, if you care for it.

The Chair: I think the committee would like to have a look at that.

Mr Dool: The Council of Ontario Construction Associations has that information.

The Chair: Okay. We appreciate that.

Mr Miller: I appreciate your brief this morning and the fact that your record is good. You made a comment about assigning a ministry inspector to monitor the work site at the employer's expense. Is that done now?

Mr Dool: No.

Mr Miller: I think we have heard a lot of concern expressed that we do not have enough inspectors. From the point of view of running Ontario, we get criticized for hiring too much help and we have to keep an eye on the budget.

Mr Dool: They do not manage safety by employers. You may be thinking of building inspectors who go in when a building is being built or whatever. I am not familiar with any kind of municipal safety inspector, certainly not as it affects construction.

Mr Miller: How would you have it? You pick up the cost on a fee basis?

Mr Dool: What we are proposing is that when we have a consistently poor performer as an

employer in construction, that a Ministry of Labour inspector be asked to that site at the expense of that employer. Force him to take him on as an employee, if you will.

The Chair: Sorry, Mr Wildman, the mikes have crashed.

Mr Wildman: In terms of the record, Tom, over the last couple of years, can you confirm that the number of fatalities in the construction industry of Ontario has dropped from 39 to 35?

Mr Dool: I can confirm that in 1986 it was 40, 1987 it was 42, 1988 was 39 and 1989 was 35.

Mr Wildman: While it has gone down slightly—prior to that it went up slightly—it has sort of stayed in the range of around the high thirties per year.

Mr Dool: I am just trying to remember the graph that I have. I believe it hit a low point of 26 or something over the last 20 years, but yes, I would say 30 would be the number. But back in 1965, it was 71, so there has been a tremendous improvement in the actual record.

At the same time, over the past four or five years that we have experienced this 30 level, our manpower has gone up by almost 50 per cent, so we are up well beyond the 300,000 mark since 1984. With the superboom that we have experienced in the province and the inclusion of all these extra people, we still maintained the same level.

Don't get me wrong. It is not ideal by any means, but it shows that whatever system we are working is working and we would like to maintain it.

Mr Mackenzie: I was just curious—sort of a generic question—does it bother you in the least bit that the construction trades—those that are organized, I am talking about—that have appeared before this committee are in almost total disagreement with the position you have taken, with respect to the credit given the Construction Safety Association of Ontario and the representation on it, the safety record to some extent and the desire for Bill 208? I am just wondering if that enters into the construction industry's thinking at all, the fact that you are totally offside with at least the organized part of the trades.

Mr Dool: Forgive me for saying it, but I do not think you are right in that they disagree with the record.

Mr Mackenzie: They have stated so before this committee.

Mr Dool: They perhaps feel that the record is not sufficiently good, but you cannot disagree with facts and evidence. In terms of the building

trades councils that have made representations to you, why they take umbrage with what we are saying or why they take opposition to our approach to Bill 208, I have no comment on it whatsoever. That is their position and I would only be making assumptions.

Mr Mackenzie: It takes two to make a partnership or to tango, as they say though, and if you have one side resisting the other side, it is a little difficult to talk about a co-operative approach.

Mr Dool: I think if you go to the Legislature you will find there are three parties and it takes a lot of talking to get anything.

Mr Mackenzie: Especially when there are 94 members in one party.

Mr Wildman: Particularly when there is a neutral chair.

The Chair: The neutral chair has not solved that problem.

Mr Dool, thank you very much, you and your colleagues, for your presentation this morning.

The committee should be informed that there is a table reserved in the Café Riva. When you have finished your lunch, would you put your luggage in room 1401, which is Mr Dietsch's room, and check out of your rooms before 1:30, when we commence with a presentation by the Canadian Auto Workers.

The committee recessed at 1205.

AFTERNOON SITTING

The committee resumed at 1333 in the Westminster Room, Radisson Hotel, London, Ontario.

The Chair: The resources development committee will come to order. We have a very full agenda, taking us right through to about 5:30, so we really must get started.

The first presentation of the afternoon is from the CAW, the Canadian Auto Workers. Are Mr Askew and colleagues here? Gentlemen, welcome to the committee. As you might know, there are 30 minutes allocated to each presentation. You can use as much time as you want yourselves or allow exchange with members of the committee at the end of your presentation, within the 30-minute time frame. The microphones are controlled by our console at the back here, so you should not need to touch them, we hope anyway.

CANADIAN AUTO WORKERS

Mr Mason: First, we would like to thank the committee for the opportunity to present this brief on behalf of 17,000 CAW members in this area. The fact that these briefs are limited by number and time leaves us to draw no other conclusion than that the health and safety of workers in this province is not a serious concern of the Liberal government. We will have three experienced health and safety representatives making presentations this afternoon.

The Chair: I know you are going to introduce yourselves, but Hansard needs that. If you could, please introduce yourselves now.

Mr Mason: To my left I have Gerry Askew, Local 27, Northern Telecom, health and safety representative, Gordon Hopper, Local 27, Accuride, health and safety representative, and Rick Witherspoon, Local 1520, Ford. He is the vice-president of that local also and health and safety training co-ordinator. Their presentations will clearly define our opposition to the Liberal government's amendments to Bill 208.

In January 1988, a proposed new bill, though far from ideal, gave labour some hope that the health and safety of workers in this province would be addressed. A year later, when Bill 208 was introduced by the Minister of Labour, industry launched an aggressive campaign to have the bill amended in its favour. It would appear to us that labour's amendments have been ignored and proposals by industry accepted,

hence watering Bill 208 down to the point where workers in the provinces are less protected in the workplace rather than safer.

We strongly support the proposals presented to the minister on 28 November 1989 by the Ontario Federation of Labour and our own union, the Canadian Auto Workers. I would just like to say that before this pile of flowers gets any higher, we ask for your committee's support in stopping the gutting of Bill 208.

Mr Askew: My name is Gerry Askew. I am a health and safety representative. I have approximately 20 years' experience and have seen the laws come and I have seen them improve. I am in favour of Bill 208, especially with the Ontario Federation of Labour's amendments and labour's amendments. The Ontario government should not consider reducing the right of workers to a healthy and safe workplace, but instead should use its power to ensure a healthier and safer workplace for all.

The great increase in repetitive strain injuries is just one example that puts requirements on joint health and safety committees to become fully trained in all issues so as to be able to make recommendations required by Bill 70. On the example of refusal of activities, if we were able to refuse activities, we would probably be able to push for better, ergonomically designed lines that are creating a lot of RSI problems.

Education and training are the keys to a safer and more productive workplace. The vast majority of conditions that workers in Ontario face can be dealt with if provisions were made to improve and make mandatory worker education. An educated worker is a concerned worker. If they know what to look for, they bring out the problems right away and we can start correcting them at the source and not along the path or back in the old ways of protective equipment.

Members of joint health and safety committees have a responsibility to see that every precaution has been taken in the circumstances. This means that the management side of committees should have the same training as the union side. Too much time has gone by with the management side not understanding the basic rights given to workers under Bill 70. If they were better educated, they would understand and be aware of their responsibilities under that bill.

The proposal to establish a bipartite Workplace Health and Safety Agency which is responsible for overseeing all the training and

research moneys available to the present health and safety associations would help solve this problem. This would provide quality training for both sides.

The most common response from workers who receive proper workplace hazardous materials information system training—I am a WHMIS instructor—is: "Thank you, I did not know." and "What took you so long to teach us?" Workers should have received this type of training long ago. With 30 to 40 per cent of workplaces having a designated substance present and no assessment of worker exposure or any control program required by the present regulations, workers every day are exposed to dangerous substances with no knowledge of such. If a lot of chemicals were more acute than chronic, I think the pile of flowers would be more than tripled.

Training all joint health and safety committees and providing in-depth training to the certified members will put to better use the \$40 million that is currently spent by the management-controlled safety associations, which have not shown results from such large sums of money, while the Workers' Health and Safety Centre, with limited funds, has trained thousands of workers on health and safety.

There is no doubt that a trained and educated workforce is a healthier and safer one and a basic right of all workers everywhere. Better educated committees and workers would help reduce lost-time accidents which cause lives, not just money.

1340

Mr Hopper: I welcome the opportunity to present this brief on behalf of the workers of Ontario. The subject of this preamble is with regard to the existing procedure under section 37, offences and penalties. I speak on this subject because I have just recently experienced a case where a company was charged and prosecuted for two violations of the Occupational Health and Safety Act.

Prosecutions under the Occupational Health and Safety Act do require an onerous task of gathering evidence and making a strong case that is not subject to the defence of having taken every precaution reasonable in the circumstances. This process is long and could result in specific evidence being overlooked that is crucial to the case. This may account for the fact that only 62 per cent of prosecutions in the industrial sector in 1987-88 were successful and many cases are simply not prosecuted.

For this, inspectors should have the power to issue immediate fines, rather than proceeding

through lengthy prosecutions. There is no real incentive for employers to take every precaution reasonable in the circumstances when all they have to do is hire a defence lawyer who knows how to confuse the court system. Inspectors in the construction industry are now able to issue citations for violations right on the spot. This aspect should hold true for the inspectors in the industry sectors as well.

Consideration should also be given on how fast companies rectify situations that do not necessarily place workers in immediate danger. These citations could be appealed in court, but only after the violation has been eliminated to first and foremost protect the workers' health and safety. Serious violations should continue to go to the courts and an aggressive prosecution policy should be implemented to ensure that increased fines have a positive effect on the health and safety of Ontario workplaces.

While the internal responsibility system attempts to solve health and safety problems directly in the workplace by the two parties, labour and management, it is not a substitution for enforcement where there are clear violations of the law. Whenever a case does proceed before the courts and a judge or justice of the peace does not fully understand the intent of the specific sections of the act and therefore makes his or her decisions based on facts that do not properly represent the spirit of the act, there is usually a long and lengthy appeal which costs the taxpayers a great amount of money each year.

I know of at least one case that was brought before the courts, that after five and a half hours of hearing evidence and because of the JP's lack of knowledge of act the case was dismissed, even though there was a clear violation of the act. This government should not amend this bill by taking things out of it; instead it should amend it by adding things to it, thereby making it a very progressive piece of legislation.

In addition to what I have already spoken about, we have seen in other pieces of legislation, that without any real knowledge of the intent and spirit of the legislation, in our justice system the cases are more apt to get bogged down. All laws in Ontario are essentially ones of self-compliance or self-regulation, where men and women are expected not to drive when they are drunk or to assault one another. However, when a man or a woman fails to regulate his or her behaviour, there is a clear expectation that the law will be enforced. In occupational health and safety we should expect no more and, as workers in Ontario, we should expect no less.

Mr Witherspoon: My name is Rick Witherspoon. I am the vice-president of CAW Local 1520. I represent some 3,500 members at the St Thomas assembly plant and I have been involved in co-ordinating and instructing health and safety training for about the past four years.

Bill 208 originally proposed to expand on our individual right to refuse unsafe work by including the term "activities." This would include such things as immediate danger, such things as lifting, as well as concerns arising from repetitive or poorly designed jobs or equipment.

The minister now proposes to restrict the interpretation of "activity" to an imminent hazard or threat. Chronic effects or latency certainly would not be considered. The minister indicates that he has expanded on our right to refuse. Not only does this not expand, it restricts.

In workplaces throughout the province where workers are now exercising their individual right to refuse, many long-term disabling injuries have been prevented. In fact, in many cases, refusals revolving around ergonomics concerns are being upheld under the present existing legislation. At the St Thomas assembly plant we feel that the right to refuse is working and in actual fact, by looking at the compensation claims, the cases for lost-time injuries, there has been a great reduction. In 1986, we saw 679 lost-time claims. That was reduced in 1987 to 634, and further in 1988 to 536.

Under the proposed amendments, workers are now faced with a double-edged sword, as they may now be penalized financially if affected by a work refusal or by a stop-work order. The worker refusing does have some guaranteed protection during the initial stages of the work refusal, while the other workers affected or unable to work as a result could end up losing pay. Regardless of whether the refusal is upheld, all workers are placed in double jeopardy. The minister must realize that this puts no incentive on an employer to respond to or to correct the problems.

At present the bill indicates that if a job is shut down by a certified member or by an individual, another certified member has the right to restart that concern. An employer has the right to shut down his operation at any given time for a quality concern or for a health and safety issue, although seldom does. This would seem to indicate that the internal responsibility system does not work.

The amendments put in place disciplinary action, action that can be taken against an individual or certified member for exercising his or her right to refuse, up to and including decertification of a certified labour rep, but

places no penalty on the management that restarts an unsafe operation. This indeed indicates that further amendments are required to ensure that either an agreement is reached between labour and management or the inspector must be called before a stop-work order is cancelled.

In conclusion, since 1884, when the first legislation addressing health and safety concerns was introduced, workers have been striving to improve on it. The Ontario Factories Act was introduced in 1884 and prescribed safety standards for workplaces and the appointment of inspectors to ensure compliance. Nevertheless, the law's standards were inconsistent and their enforcement uncertain, since the powers of the inspectors were highly discretionary.

Over the course of the next 30 years similar laws were enacted to cover mines, construction sites and industry. The first Workmen's Compensation Act was adopted in 1914. None of these laws recognized the rights of workers or their representatives in health and safety matters.

Some 64 years later, in 1978, the Occupational Health and Safety Act became law, representing a major change in the role of government in workplace health and safety. This was also the first piece of legislation that recognized the workers' right to refuse unsafe work, along with the right to be represented and to have a say in decisions regarding their own safety.

Labour across Canada has waited more than 10 years for further reform in occupational health and safety. If this committee and this government allow a weakened version of this bill, Bill 208, to become law, they will be telling workers not to count on their own government for help, that they are willing to accept one workplace death and 1,000 injuries every working day.

Organized labour must press for better laws through political action and deal with health and safety problems by means of collective bargaining. There have been many significant bargaining successes over the years, but, of course, their application must be supported by newer and better legislation.

On behalf of the CAW, we thank you for this opportunity to express our views on Bill 208, although it appears the Labour minister is prepared to weaken its provisions to the point of destroying its original intent.

The Chair: Thank you, gentlemen, for your brief. There are a number of people who indicated an interest in asking you questions. Mr Mackenzie, Mr Fleet and Mr Dietsch.

Mr Mackenzie: On the table with you are some 285 flowers representing 285 workplace

deaths in the last year in the province of Ontario. Do you know of any of those flowers that would represent management: managers, owners, chamber of commerce, board of trade types?

Mr Mason: None.

Mr Mackenzie: None at all. Do you find it passing strange or even obnoxious that the views of the people who are not paying the supreme penalty seem to be the ones the government is listening to in terms of the amendments that we are told are coming in this legislation?

Mr Mason: Very distasteful.

Mr Mackenzie: The chamber has made some strong briefs in opposition to this bill and they obviously got through to the Premier with their letter of 2 March from Mr Thibault to Premier Peterson. They asked for a number of changes. The amendments represent almost everything that was in that letter in the way of potential changes to the legislation. Yet just today we heard from the London Chamber of Commerce that it does not go nearly far enough. They want additional changes. Do you think this government is ever going to be able to satisfy the chamber and the business community with amendments to this particular legislation?

1350

Mr Askew: It sounds like they want to scrap the present laws, let alone the new laws.

Mr Fleet: I am just delighted to hear questions that are not leading questions. It is not that I ever do that.

Mr Mackenzie: The proper perspective.

Mr Fleet: You have your perspective, I am sure.

Mr Mackenzie: It is a political one.

Mr Fleet: I did appreciate your presentation and rather than engage in banter with other members of the committee, I would like to put a question to you. I want to be fair about putting the question to you because it deals with a kind of technical point. You have indicated that inspectors in the construction industry are now able to issue citations for violations on the spot. I would, first of all, appreciate a little bit more detail about what it is you envisage, if you see this as a kind of system like when parking tags or speeding violations are issued and tickets are issued by police officers, if that is what you are envisaging.

Secondly, I am not sure what section of the act, or if there is another provision that you are referring to where this power exists for inspectors in the construction industry. If you cannot answer it, there may be other people from the

Ontario Federation of Labour or somebody else who can give us the information. I would be interested in knowing exactly the details of how you envisage this thing operating.

Mr Hopper: From my perspective the way it works is just like that. An inspector in the construction industry comes upon a site and most of what he issues citations for, for that matter, are workers not wearing safety glasses or not having the proper safety boots and citations of that nature.

What I see is that if an inspector in the industry sector has that same power to walk into a plant and rather than have on his mind, "Will this order hold up in a court of law?" if he truly believes that employer was in violation and it is clear cut that he was in violation of the act, then he should have the power to issue a fine rather than have to go through the lengthy prosecution system in the courts. I think that would give the employers more of an incentive to look twice at what they are doing in a lot of cases.

Mr Fleet: I am not aware of anybody having the power, per se, to issue a fine. As I understand the process now with, say, a speeding ticket, what somebody has the option to do is to plead guilty and mail in the fine. Is that what you are proposing?

Mr Hopper: Not in the same respect as that of a police officer dealing with a traffic violation. It would all have to be part and parcel of the act. It would have to be in the proper spirit of the act and this would allow the inspector to make an easier decision rather than have to wonder if the whole thing is going to hold up in a court of law.

Mr Fleet: I have some difficulty then. You want, in effect, the powers of the judge to reside with the inspector. I do not want to be unfair to you but that seems to be what you are saying.

Mr Hopper: In some cases, yes, because the inspector would have more knowledge about the intent of the act than a judge or a justice of the peace because he is out there every day in factories and he deals with numerous employers. I think it would be fair for him to make the decision rather than a judge or a JP.

Mr Fleet: You do not have a sense that might render a rather dictatorial power to an inspector? It could work either for or against workers, I might add.

Mr Hopper: When you are dealing with workplace health and safety, I do not think there is any discussion whether it is dictatorial or not.

Mr Fleet: They already have the authority to issue a control order.

Mr Hopper: Yes, but how many employers actually follow through with that?

Mr Wildman: I appreciate your presentation. When we come right down to it, the discussion about occupational health and safety, the safe workplaces in this province and the debate between employers and workers' representatives, it really comes down to a question of power in the workplace, does it not?

Mr Hopper: Basically, yes.

Mr Askew: I do not know if it is power or it is an educated right. A lot of arguments stem from knowledge on one side and lack of knowledge on the other. If you are equally and jointly trained, you would avoid a lot of problems because you would both be coming down the same stream.

Mr Wildman: What you are saying is if people, in both management and labour, were better educated, they could co-operate to ensure there is a healthy and safe workplace.

Mr Hopper: That is true.

Mr Wildman: In terms of the joint health and safety committees now, though, even where you have well-trained people involved, if the committee makes a recommendation for a change in a work process or guarding a machine or something like that, does not the power still reside with management on whether that recommendation of the joint health and safety committee will be implemented?

Mr Askew: It certainly seems like that most of the time, although the act said that it should be implemented. But certainly they seem to have the power to control actually the physical part of repairing, replacing or advancing any situation. That is why I feel if they were trained equally, they would feel more responsible.

Mr Wildman: Just a final question then. One of the arguments that has been put forward by various representatives of management to our committee against increasing the power of workers, particularly the certified worker with the right to shut down, has been that management is accountable. They believe it would cost too much in terms of production or implementation sometimes if workers had this right.

In your view, how could we assure management, if there is any way to assure management, that workers are accountable? Who are you accountable to, if anyone? Management seems to be taking the position that workers are not accountable.

Mr Askew: I am accountable to all the workers, and actually sometimes management is a worker too, but I am accountable to all the

workers. It is too bad they are not, because you can see by the way they spend money on quality control, on production techniques, on advanced technology, that they are not spending it on health and safety or ergonomically designed workplaces with those type of issues of productivity and quality.

The Chair: Just one more question.

Mr Wildman: While management is accountable to the shareholders, you are accountable to your fellow workers, your members.

Mr Askew: That is true, who sometimes are the shareholders.

Mr Dietsch: I want to go back to Mr Fleet's line of questioning when you were putting a very interesting proposal forward with respect to the inspectors. As I understood it, you were proposing that inspectors would have the authority to levy their own tickets right there and then on the spot as a way in which to circumvent the lack of understanding of the judicial system. Do you feel then that it would be fair for a labour inspector who would come into the workplace, who would levy a fine on individual workers who were perhaps not wearing their safety equipment that they were provided?

Mr Hopper: As I mentioned, in the construction industry, that is where most of them come from. Whether it is there for the main purpose to circumvent the law or to circumvent the lengthy prosecution system, I think it would give employers more of an incentive to hope that did not ever have to happen. It would give them more of an incentive to make the internal responsibility system work.

Mr Dietsch: But more particularly, as in your particular setting, in your plant, would you support one of your colleagues on the floor who perhaps had been provided with safety equipment and was not wearing it to get a ticket right on the spot?

Mr Hopper: Dealing with the circumstances of the violation, I probably would, yes, if that was part and parcel to the act and he was not doing it and he had fair warning. Then I would think that would be fair, yes.

1400

Mr Dietsch: Then you would support him.

Mr Hopper: Yes, just the same goes with the employer and anybody else who violates any part of the act.

Mr Dietsch: One of the other questions that was raised was in regards to who is accountable to whom. Obviously management is account-

able, as Mr Wildman pointed out, to a board of directors. One of the proposals in the bill, of course, as you probably are aware, is that fines would be increased from \$25,000 to \$500,000, but not only that; more particularly, the top management and corporate directors and officers holding those positions would also have an accountability process. Do you feel that it is a positive step in the right direction?

Mr Witherspoon: I will respond to that. First of all, there is of course in place a system now where either a worker or a manager can be disciplined and can receive fines.

Mr Dietsch: That is right.

Mr Witherspoon: I do not know, unless you know of a circumstance where in fact maximum penalties have been levied in the workplace as it exists now. We have had cases where people have been tried, convicted. Maximum penalties are not levied now. I do not know why you would perceive that in the future, whether it is \$50,000 or \$500,000 with respect to the industries that we work in—myself, the Ford Motor Co. That \$50,000 is not deterrent to the Ford Motor Co. They lose that much when they stop for a quality problem, if they stop for a quality problem. They certainly are not going to change the way they act with respect to the health and safety concerns of the individuals in their plant. They seem to think they have the right to determine what is safe and what is not safe and, in fact, do exercise that right regularly.

Mr Dietsch: You concentrated on the fines, the obvious point, with respect to the increase of fines being so dramatic obviously indicates to the judicial system that there is a serious effort with respect to the fines. But I was more particularly concerned with the other aspect in dealing with the corporate directors, who now are going to have to make sure that their lower management individuals have the policy in place, that it is a responsible policy and it is enacting the health and safety that we all want in the workplace or else they are going to perhaps go to jail. I think that when you start twigging that, do you not agree that it is an improvement, or do you think we do away with that?

Mr Witherspoon: In my view, that responsibility has not changed. If you look at the act, as it stands right now, it is the employer's responsibility to ensure the worker's safety. It is the responsibility as it is passed down the line for the supervisor to ensure that worker's safety. Certainly that worker has a responsibility for looking after his own safety in the workplace, but the

responsibility for protection, as the law exists now, still falls on the shoulder of the supervision to ensure that the worker does know how to do his job.

Mr Dietsch: You are not answering my question. I am asking you whether or not you feel that is a positive contribution to the bill, or should we do away with it? That is what I am asking you.

Mr Witherspoon: I would suggest that it is going in the right direction, but it certainly does not do far enough.

The Chair: Mr Witherspoon, Mr Hopper, Mr Askew and Mr Mason, we thank you very much for your presentation.

The next presentation is from 3M Canada. We welcome you to the committee this afternoon. If you will introduce yourselves, the next 30 minutes are yours.

3M CANADA

Mr Brooks: I am Jack Brooks, vice-president of manufacturing for 3M Canada. I would ask the other gentlemen to introduce themselves.

Mr Gloin: I am Jim Gloin, manager of public affairs.

Mr Howse: My name is John Howse and I am manager of loss prevention.

Mr Rowcliffe: Peter Rowcliffe, assistant corporate counsel.

Mr Brooks: We very much appreciate the opportunity to address this committee. By way of introduction, I would like to give you a brief overview of our company.

3M Canada was established in 1951 as the first international subsidiary of the now global 3M organization. 3M Canada has annual sales in excess of \$600 million, employs over 2,000 people nationally and exports a number of the Canadian-manufactured products. I will be showing a few of our key products in a moment.

We have invested some \$120 million in Canadian manufacturing facilities over the years. The majority of this is in Ontario. In fact, four of our five Canadian manufacturing sites are in this province and our main plant and head office are right here in London.

We share the concerns of the Ministry of Labour that a safe and healthy work environment for employees is essential. We have always held this belief and have acted in a positive way, often instituting measures to ensure the health, safety and protection of our employees before government legislation was considered. For example, 3M has had a joint health and safety committee in place for several years which operates in many

ways that are similar to those proposed in Bill 208.

Accordingly, we support many of the initiatives addressed in Bill 208. At the same time, we have several concerns with some of the provisions of the bill as currently proposed. We will be submitting a separate written brief to the committee to address those concerns. Today, however, we wish to focus totally on one aspect of the legislation that, to our knowledge, has received little attention so far. However, it is so critical that it could alter dramatically our ability to carry on with the manufacture of some of our current products in Ontario. It would also be a major factor when considering future expansion plans in this province.

Our current concern regards the requirement to disclose trade secret information. Public access to this information would not advance the cause of occupational health and safety in Ontario but would, on the other hand, be a blueprint for competitors seeking knowledge about our products. This would be extremely damaging, and in the case of some products, it might prove intolerable.

More specifically, Ontario's existing Occupational Health and Safety Act calls for public disclosure by 31 October of this year of inventory lists and material safety data sheets relating to raw materials and intermediate formulations. These would be put in the hands of the Ministry of Labour, the local medical officer of health and local fire departments. This information could then find its way into the hands of competitors.

Naturally, 3M and other industries are very concerned about the conflict between these disclosure provisions and our vital need to retain trade secrets, and there appeared to be a consensus that these concerns would be properly aired and addressed. However, we find the only change to these requirements contemplated in Bill 208 would be the additional qualification concerning disclosure that would read "upon request." This does not address the problem. In fact, it is tantamount to ignoring it.

These disclosure requirements exceed by far what is deemed necessary to protect the health of workers under the federal workplace hazardous materials information system, better known as WHMIS. WHMIS only requires public disclosure of material safety data sheets for finished goods and then only for finished goods that happen to be designated as controlled products that present a potential health hazard if they are not handled or used correctly.

Even when a material safety data sheet is required for a certain finished product, trade secret protection can be claimed under the federal WHMIS program in cases where a material safety data sheet spells out too much information to the competitors.

In addition to potentially hazardous products, the Ontario legislation takes the publication of material safety data sheets a giant step further to include any controlled substance that was used during the manufacture of any finished product, even if the end product is not considered to be hazardous. This would include controlled substances used in the manufacture of, for example, a roll of tape or a sheet of sand paper.

This is highly sensitive information. As explained in our written submission, we strongly feel that public disclosure of trade secrets would not advance the cause of worker safety. Moreover, we are very concerned that our trade secrets would not be properly protected under the Ontario legislation.

Let's leave the question of public disclosure for a moment and move behind the scenes to the plant floor, where raw materials and intermediate formulations are used every day. This is where the material safety data sheets have a genuine impact on the health and safety of workers. 3M employees who work with these compounds already have access to this information on a confidential basis under WHMIS legislation. Workers respect this confidentiality. They have every reason to do so since they know that the continued success of the product, and therefore jobs, depends on keeping this information out of the hands of competitors.

1410

I wish to emphasize that we agree there is a real need to give our workers information they need to carry out their jobs safely. We had been doing this long before it was a requirement under WHMIS legislation, and in all those years, we have not found disclosure of this information to employees to be a security problem.

However, in addition to disclosure on the shop floor, which we agree is useful and is in fact already in place across Canada, Ontario would also require that we make inventory lists and material safety data sheets for these raw materials and intermediate formulations available upon request to the Ministry of Labour, the local medical officer of health and the local fire departments.

We have been told by Ontario officials that we can obtain trade secret protection under the federal WHMIS legislation, but our analysis of

both WHMIS and the relevant provincial legislation suggests that this is by no means clear. Certainly the WHMIS legislation is designed primarily to protect workers and was never intended to become part of any provincial right-to-know legislation.

Our written submission outlines in some detail why there is no guarantee under Ontario law that critical trade secret information will not find its way straight to a competitor, and I do not plan to go through everything here again in this discussion. My job right now, and I hope that I can do this adequately, is to explain the tremendous impact this section of the legislation could have on 3M and Ontario industry in general.

First of all, we at 3M have established that the Ontario disclosure requirements seem to have no counterpart in any other jurisdiction in Canada, the US or the more than 50 countries in which 3M operates. This includes some US states with very progressive health and safety legislation, as well as nearly every major industrialized country in the world.

I am not suggesting that being first is always a bad thing. However, in this case, lack of similar disclosure requirements in other jurisdictions shows it is entirely possible to draft meaningful health and safety legislation without forcing industry to divulge vital trade secrets.

Earlier, I mentioned that I would show you some of our key Canadian manufactured products.

First, we have a roll of tape. In its finished form, this roll of masking tape is not hazardous and is not classified under WHMIS. It is not considered a controlled product. We are not required under WHMIS to provide a material safety data sheet to those who purchase the tape.

However, masking tape is a very complex product. Various types are produced to perform well, for example, in body shop environments, high-temperature drying ovens, or they have different adhesive characteristics, depending on the application. Numerous processes and formulations are used at various manufacturing stages. Some of these materials used in these formulations are controlled substances, and as I have just mentioned, we have prepared material safety data sheets and share them with our employees on a confidential basis. Now Ontario is asking us to share this with the rest of the world.

Naturally, these material safety data sheets contain product formulations. We consider these to be proprietary and confidential. If disclosed to outside sources, they would enable our competitors to determine product formulations and

process information and it would significantly enhance their knowledge of our processes. In the case of masking tape, this information could very likely enable a competitor to duplicate or copy our technology, and subsequently the end product.

Next we have a piece of coated abrasive, or, if you prefer, sandpaper; 3M has been making various versions of this product since the early part of the century. There are types tough enough to plane boards in sawmills and fine enough to polish optical glass. They are big business for 3M worldwide, including Canada. In fact, our London plant supplies certain types for the whole North American market.

They also involve a surprising level of technology. They are subject to continuing research. Coated abrasives are a high-tech product, and 3M's worldwide business would be affected if information regarding some intermediate formulations were revealed to Canadian and foreign competitors through material safety data sheets made public by the province of Ontario. As in the case of masking tape, public dissemination of an MSDS, even for the finished product, is not a WHMIS requirement, since sandpaper is not considered a hazardous substance.

This is Scotch-Brite. Scotch-Brite is made in Perth, Ontario. It is another important export product. We call this family of products nonwoven abrasives and we have a whole plant dedicated to their manufacture. They take many forms, from sink scrubbers to floor pads to wheels that are used to manufacture wooden moldings, but they are all based on nonwoven technology invented decades ago by 3M. This technology has spawned many products and is still of great value to 3M worldwide. Under the Ontario legislation, we would have to tell competitors more than is economically prudent through public availability of material safety data sheets for raw materials.

3M has already spent hundreds of millions of dollars worldwide on research and development to create innovative and unique products. As a result, we must object to the Ontario disclosure requirements in the strongest possible terms. We cannot support the concept of public, as opposed to worker, right to know in this instance, nor do we feel it would advance the cause of health and safety in the workplace. In fact, we understand that some local officials already have said that they do not need the information, nor do they have the resources to deal with it.

Instead, the Ontario disclosure requirements simply give competitors ready access to our process technology without the expenditure of time and money for research and development work. The disclosure requirements would make Ontario a unique gathering ground for competitive intelligence anywhere in the world industrial community. The information gained here will certainly not stop at the Ontario border.

The companies hurt most will be those who are creative, innovative and unique in their manufacturing and R and D operations; in short, the very kind of company that can contribute the most to the prosperity of Ontario, and possibly the ones most likely to be mobile.

We wish to emphasize once more that 3M has a long history of disclosing raw material and intermediate formulation information to our employees on a confidential basis. This serves a very useful purpose in promoting health and safety objectives in the workplace and we are confident that such disclosure can be made without breach of trust. Our employees recognize the importance of maintaining secrecy, since this is the information that has enabled 3M Canada to provide significant employment opportunities.

However, we see no need to extend such disclosure to public authorities. In our view, such disclosure does not materially enhance the objectives of the health and safety legislation. We strongly feel that Bill 208 must be amended to specifically delete the provisions of Ontario's Occupational Health and Safety Act requiring the filing of inventory lists and material safety data sheets with the Ministry of Labour, local officers of health and local fire departments.

It is an unfortunate reality that, unless these amendments are made, 3M would have to take appropriate measures to protect our proprietary processes and operations, which could include a shutdown of those manufacturing operations which are sensitive to trade secret disclosure. Although highly undesirable, this could be our only recourse to protect not only the interests of 3M Canada and its employees but of 3M operations worldwide, which make and sell the same products.

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It is also very disturbing to us that the ramifications of disclosure of proprietary information required under Ontario legislation would be a critical consideration in future expansion of our manufacturing operations in Ontario. Moreover, we are certain that other manufacturers have the same problem and that this aspect of the

legislation would have a negative impact on future growth potential for industry in the province.

We believe that after considering this issue, the committee will agree that the potential loss to the Ontario economy resulting from this section of the legislation far outweighs any benefit that may be derived from the additional disclosure requirements.

The Chair: Thank you, Mr Brooks. Just before we get into the questions, and there are six or seven people on the list, I am a little confused. I was looking and trying to match up Bill 208 with the existing health and safety legislation, specifically referring to your point about confidentiality, and in the actual act regarding WHMIS, section 22e states that an employer may file a claim with the claims board for an exemption from disclosing. It goes on to say the reasons for that. I do not see anything in Bill 208 that removes that for you, to apply for an exemption. Am I missing something here? It is quite possible.

Mr Brooks: No, that is true. The only change that comes from Bill 208 is that the information under section 22c would be provided "on request or if so prescribed," so those words would be added.

Our position, though, is that the information should not be made public in the first place. The matter of trying to protect the information after it is already out there is not a very good position to be in. You do not want your technology floating around out there and hoping that because you have made some application, which may be denied, that is going to be protected.

Mrs Marland: Mr Brooks, you are a breath of fresh air. Just at the point that our three weeks of dog-and-pony show were getting quite repetitive, you have introduced something that has not been addressed before in that context. I think that this aspect of the legislation obviously is not only very important to 3M but to me. I am sitting here listening to you and wondering how it is possible. I mean, it is almost ludicrous that a government with all kinds of resources that is trying to work and encourage industry to come into this province would not have anticipated the concern that you have.

I recognize the size of your company, but have you had no contact from the Ministry of Industry, Trade and Technology, for example? I would presume that other ministries would look at legislation that impacted industry in the province. Have you had no contact or input at all?

Mr Brooks: There has been some discussion, particularly between ourselves and this ministry, and also from the Canadian Manufacturers' Association and other manufacturers. I would like to have John speak to that, because he has been more involved in that work.

Mr Howse: I think the problem is that the majority of manufacturers do not realize the implication of the legislation, especially when you relate back to the WHMIS requirements. They look at the WHMIS legislation. They realize that in regard to the products they manufacture they are going to have to disclose the material safety data sheets and product formulations for the finished products. However, in the case of an item like this, which is a manufactured article and we do not have to prepare a material safety data sheet for it, I do not think they realize that what is proposed in this legislation takes it into the manufacturing facility and applies basically to every product formulation, every raw material that you have within the confines of the working space.

Mrs Marland: It is obviously very significant that your company has been making your employees aware of what they are working with and that that in fact has worked. The confidentiality has been protected and the workers have been protected.

The Chair: Because we have so many, can we move on?

Mr Dietsch: Mrs Marland is right in one sense. This government is certainly on record as promoting the kinds of high technology that your particular firm does. I think that is important.

More particularly, with respect to the point that the chairman raised with respect to section 22e of the existing act, and as I understand it in your brief as well, you have pointed out where you have been told by the Ontario officials that you can obtain a trade secret exemption through the federal WHMIS legislation. Has your company taken advantage of this particular segment of the bill? Do you have trade secret protection currently under some of the federal WHMIS program?

Mr Brooks: I am going to ask Peter to answer that part. In case I did not make it clear here, the requirements for the application in the existing Ontario legislation take effect at the end of October this year. Actually, we have not yet filed the inventory lists and the material safety data sheet that would be required under subsection 22d of the existing legislation. But that is supposed to happen in October 1990.

I am going to ask Peter to talk to the WHMIS question.

Mr Rowcliffe: Yes, 3M has filed 23 separate applications covering finished product formulations. I understand that we have also filed very few WHMIS applications in respect of semifinished products. I believe we are less than half a dozen. That was done under WHMIS because those are perceived as being so sensitive that they were deserving of trade secret protection at that time.

I wish to emphasize, of course, there is no guarantee that any of those applications will be accepted by the WHMIS authorities. One of the fundamental concerns we have with the legislation is not that we can file with WHMIS—that is certainly an improvement—but the fact that WHMIS may not agree with our submission, and furthermore, as the legislation is presently drafted, there is a risk that the WHMIS material that is submitted to the Ontario authorities may be subject to disclosure under the Freedom of Information and Protection of Privacy Act. There is a concern there that the information may be publicly available through that forum.

The Chair: Would you allow one more question from the other side, Mr Dietsch?

Mr Dietsch: Is that it? I do not have an opportunity to ask any more?

The Chair: I am just trying to give each caucus time for one question, that is all.

Mr Dietsch: Fine. Go ahead.

Mr Mackenzie: I guess the difficulty I am having with the presentation you are making is that the need to know what materials workers are dealing with in the workplace has been one of the long-time demands of the labour movement in Canada. It carries some particular relevance when you look at the possibility of a fire or something else happening in the workplace.

You say you have no difficulty in supplying the information to your workers, and you have several hundred workers, a couple of thousand, I guess, from the figures you have given us. I really have some question in my mind as to why that information getting out—admittedly, they are your workers—should be any more at risk if it had to go to the Ministry of Labour, or the local fire officials, in any event. It seems to me you could make a good argument that they are as responsible as 1,000 or 2,000 workers in the plant getting the information.

Mr Brooks: Not really. The worker has a very important stake in the security of information and security of the technology. His job depends on it.

Naturally, there is always a risk when you have 2,000 employees and you are dealing with technologies that are sensitive, but that is a risk we are certainly prepared to take and we have always shared this information with our employees. We have no difficulty with that part of it.

Granted, I accept your point that there is a security risk. As soon as you tell the information to anybody you have lost some control of it, but we accept that as a responsibility and we have been doing that for some time.

I would point out that in section 22c we talk about giving this information to the medical officer of health, the fire department and the ministry and then the next sections says, under public access,

"The medical officer of health, at the request of any person, shall request an employer to furnish a copy of the most recent version of the inventory or of an unexpired material safety data sheet, as the case may be."

That is any person at all.

It goes further to say that the medical officer of health does not have to tell or disclose the name of any person who makes this request.

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Mr Mackenzie: The other side of that is that in our town we had two chemical fires over the last few years that achieved some notoriety, in Stoney Creek and in Hamilton, and in both cases one of the criticisms was that for the longest period of time the people fighting the fire were not aware of what the effect was of some of the chemicals in combination in both of these fires. I know I went down and they had a heck of a good chunk of the city roped off because they were not sure just what they were dealing with.

Mr Brooks: We are very sensitive to that and we do in fact bring the personnel from the fire stations that would respond to a call from our plants. We have these people in our plants on a yearly basis, and this is everybody. This is all the staff that would respond. We show them where the materials are, the kinds of materials we are using, the kinds of protective equipment we have in place, the access and the egress, and we are certainly prepared under those circumstances to sit down and go over the kinds of materials we have in the plant, and in fact we do that. That is on our premises and it is something that is a controlled situation.

The Chair: We appreciate your presentation and the very specific nature of it. It will be included in our list of recommendations that have been made to the committee when we consider the clause-by-clause discussion.

The next presentation is from the London District CUPE Council. I recognize Mr Divitt. He is everywhere.

Mrs Marland: Yes, I recognize him, too.

Mr Divitt: I will buy you dinner one night.

The Chair: We welcome you to the committee this afternoon. We look forward to your presentation. As I think you know, the next 30 minutes are yours.

LONDON DISTRICT CUPE COUNCIL

Mr Thompson: My name is Bill Thompson. I am president of the London District CUPE Council. The gentleman next to me, you seem to know. He is Joe Divitt. The gentleman next to him is Wayne Brand and he is president of Local 107, the outside works.

First of all, I wish to express my appreciation for your allowing the London District CUPE Council this opportunity to appear before this committee to address our concerns on Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act. As I go through the act, I will be condensing it.

It was not perfect but it was a step ahead when Bill 208 was introduced in January 1989. It was hailed as a step forward. It was read over and over by many of our top labour leaders and most knowledgeable health and safety activists and by many of our rank and file members, who every day put their health and safety on the line in jobs that some of us would not want to do and in work that exposes them to dangers we may never understand.

Labour had serious reservations about the bill, but despite the flaws we finally believed that it did present an opportunity to substantially reduce the totally unacceptable number of fatalities, injuries and diseases currently suffered by Ontario workers in their workplaces.

In 1988, 293 workers were killed on the job in Ontario. Four of these were from the Canadian Union of Public Employees, which was four too many. One worker dies in the province almost every working day. From 1986 to 1987, the number of workplace deaths increased 14.4 per cent. In the same period the blue collar workforce, considered to be at the greatest risk, increased only 4.1 per cent. The statistics are from the Ontario Federation of Labour.

These figures do not take into account the many deaths or illnesses due to toxic or hazardous exposures on the job. It is estimated that as many as 6,000 Ontario workers may die each year from workplace cancers, heart disease or respiratory disease.

In 1987, over seven million workdays were lost due to workplace accidents and illnesses. This was five times higher than those days lost to strike or lockouts.

For many years, labour has demanded the act be improved. After years of promising, the Ontario Ministry of Labour had presented its amendments to the Occupational Health and Safety Act.

The present situation: the law stipulates that the employer shall inform all its employees about dangerous conditions in the workplace. When you talk to these employers and you ask them if they are aware of the hazards, a majority say no. Then you ask yourself about the workplaces not covered under the act. Are these workers informed?

Under the act, it lays out the conditions, duties and responsibilities for joint health and safety committees. Ask the workers: "Do you have a committee? Who is on the committee? What does the committee do? When do they do inspection? Who is present in a work refusal?" The answers will be frustrating and very aggravating.

What should workers do if their work is unsafe? The vast majority will tell you that they would first tell management, then refuse to work until they thought it was safe or until management has said it was safe to return to work. It is usually three months later that the union health and safety representative hears about it at the joint meeting where it is reported. Where is the internal responsibility system in action? It seems to me that, yes, the employer has allowed health and safety issues to be dealt with in the workplace, internally if you wish, but at its discretion.

The employer then decides who has what responsibility when it comes to policies, decisions and costs. It is their responsibility, and when somebody is killed, injured or diagnosed as having workplace cancer, it is the worker's responsibility. To me the internal responsibility system is a figment of the imagination of the government, an issue to be played with by the employers who are concerned about the health and safety of their employees only because of the cost factors involved.

While Bill 208 contained a number of amendments that would take us forward in health and safety, as usual the government produced checks and balances that would continue to restrict the rights that the bill provided for workers. This was not enough for the corporate leaders, the construction industry and the directors who sit on

boards and ultimately hold this government for ransom.

The problem with the amendments: in October 1989 the Minister of Labour (Mr Phillips) spoke of amendments to the proposed bill that in essence put workers in this province not one step, but two steps back from what was proposed in Bill 208. In the original bill we were given new rights with restrictions and checks. The proposed amendments, to my way of thinking, have taken these rights and reduced them to nothing more than vague writings on the wall with further restrictions and checks on the rights we had prior to Bill 208, which makes it one less than what we had already before we started.

The work progress instills the idea of advancement towards a maturity or completion, improvement or forward movement. The proposed amendments by the Minister of Labour instills in us regression, a move backwards, a withdrawal of passing the buck, so to speak. These amendments do nothing to improve the right to a health and safety workplace, but it does show us that this minister is definitely listening to the corporate lobbyists and not to the workers of this province and the survivors of our dead brothers and sisters.

Bipartite health and safety: I believe there have been a number of briefs presented by a number of labour organizations and we agree with their position on that matter.

The right to refuse: Bill 208 proposed to expand our individual rights to refuse unsafe work by including the work "activity," which meant that we could refuse to lift a heavy load or to do repetitive actions that could lead to repetitive strain injuries, which would have clarified the rights of individuals to refuse unsafe work.

The minister for some reason now proposes to restrict the interpretation of "activity" to current or immediate hazards or threats. The minister gives the example of lifting as an activity and leaves open, as usual, immense trepidation as to what, if any, other activities are covered.

The one prime example that comes to mind is within the health care field where one employee is detailed by the employer to take charge of a known violent patient while working on night shift. There are no support staff to give assistance. Or the person working in a kitchen who handles stock that must be moved from the back of the truck to the storeroom in the middle of the winter, while exposing the rest of the kitchen staff to the same extreme cold temperatures

without protection because management cannot come up with the bucks to improve the situation.

The lack of regulations dealing with ergonomics leaves workers with no hope, considering the minister's amendments do not include repetitive strain injuries resulting from poor ergonomics or the design of the workplace.

What about the continued exclusion of other public sector workers such as police, firefighters, correctional officers and health care workers who will continue to be restricted in their right to refuse.

We are in agreement to the right to shut down. We believe that there have been others, that many briefs have contained it and we concur with their statements.

Joint committee members must come from the workplace. There is a real concern regarding the selection of members of the joint committee. Bill 208 requires that the labour members of the joint committee must come the actual workplace, whereas the management person may come from those who, if possible, work in the workplace. How can a person who is selected by management to represent a workplace not even work in the workplace?

The Ontario Federation of Labour has presented many proposed amendments. Among them are: employers who take reprisals against workers must be prosecuted; labour should be able to bring in technical advisers to the workplace; no worker assigned to a job that has been refused until the work refusal is resolved; a certified worker member should investigate all complaints of all workers.

These are but a few of the amendments proposed, and the ones pointed out to me by workers in the workplace, which they understand and see as tangible issues at this time.

At this time in our presentation I would like to ask Wayne Brand, President of CUPE Local 107, the outside local in the city of London, to present the problems they have faced in dealing with the employer regarding health and safety.

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Mr Brand: I would like to thank the committee for affording the opportunity to appear before it. Basically, it is in detail within our brief and I would like to just skim over it a bit, because I have some concerns I would like to address from a presentation earlier this morning.

Our health and safety began approximately two years ago. In our workplace, our health and safety committee consisted of four people of management, one of labour. During that course of time we had quite a few accidents and injuries

and at that time we sent our people to our national organization for education on health and safety.

After we acquired this knowledge, we came back to the workplace and having no response from the employer we had to ask the Ministry of Labour to intervene. They came in and set up programs between management and labour where four or five meetings took place. At these meetings we would sit down and our goal was to put together the structure of the committees and how the committees would work.

During this time, we would meet with management on one occasion, set up for another meeting after we had resolved a few issues and come back to carry on to incorporate this. At these times we would leave one meeting, and approximately a couple of weeks later we would come back and everything that management had agreed to they it on. This went on for four or five meetings. Not a thing was resolved.

At that point in time, the Ministry of Labour stepped in and approached the Minister of Labour for orders. We were the first municipality to receive orders from the ministry as to how the structure and the regulations under our committee were to work. Since that time—it has been in place for about a year—as was pointed out this morning, we have accumulated quite a few orders within a year. There are approximately 50 orders here and there are still more. There are more under appeal and I have others, other than this. I guess it has all been accumulated in a year.

This morning, I heard the representatives from my employer put forth a presentation, concerns about workplace refusals and the workplace hazardous materials information system. We have had orders written by the Ministry of Labour to the corporation as to WHMIS and designated substances. As far as work refusals go, we have had quite a few work refusals entailed in these orders. We also have a corporate safety officer who at his own leisure constructed his own work refusal method, contrary to the ministry. The ministry ordered him to cease and desist with this and comply with the law.

During the course of this year we have found that we have never been allowed the opportunity—in some cases we have but in most cases we have never been allowed the opportunity to investigate serious accidents and injuries. We have had accident sites and accident reports tampered with. Basically, everything that could go wrong did go wrong with it, and right now at this stage of the game, within two weeks we will be meeting again with the Ministry of Labour to start all over again from scratch.

We have had problems with contractors in our workplace. While the tenders put out by the corporation of the city of London indicate that they must work in compliance with the Occupational Health and Safety Act, we have numerous occasions where we have had violations. We have had the contractors fire their employees and leave the work site because they would not adhere to the health and safety regulations.

We have had numerous injuries. We had one gentleman run over by a bulldozer at our landfill site. He is going into his third year of being off right now. The corporation has brought him in and indicated under Bill 162 and under the Workers' Compensation Act that if he did not return to light duties he would be cut off benefits. They came in and offered him light duties. When I did the investigation on this, I found the light duties they offered him were back out at the landfill site backing in trucks. For that procedure, basically all day long you are walking around in about two feet of garbage, backing up refuse packers and contractors' packers. This man just got off crutches two weeks before that meeting. He was on a cane at that time. They wanted him to come back in and that was his job for light duties.

Mr Divitt: What I would like to give you is an overview, because I believe that we really have to go on record from what we had this morning from the city of London. We have an employer what in 1987 met with the Ministry of Labour's advisory service. I was present with Local 107.

Clearly we wanted terms of reference for a health and safety committee that would protect workers. What we had instead was token gestures—half of our meetings at the end of a shift in all the yards across the city. What we ended up with, and keep in mind what Wayne has said, was we had a meeting, we went back to the second meeting and the employer reneged on everything he had agreed to at that previous meeting. This happened on five occasions. Even the Ministry of Labour's advisory director, Ian Carruthers, said to the employer, "If this were negotiations, you could be charged."

We do not look at health and safety as negotiable. We are trying to get what is in the law. That is what we are asking for.

The workers were given a co-chair. Four health and safety committees were established in four different yards—sewage workers, the garbage, that type of place—and then there was a central committee. All the co-chairs from these four locations sat on the central committee. We felt this was a good structure. We have it in

Hamilton. We have it in many other areas and they work well. Here we have an administrator and people below him who believe they are God. They believe they can allow a man to get a syringe in his hand, tell him to go get a tetanus shot, wipe it with iodine and get back to work. That just happened within the last two weeks.

This administrator believes that because he has hired health and safety co-ordinators who are really putting out fires—that is all they are doing in this city—that he is above it, that he cannot be charged by the ministry. It was not until the minister's adviser pointed out to him, "You can be charged because of these sections of the act," that we have seen some movement in the city of London.

After this whole process within the city of London, we had to get down to writing briefs—you have an attachment for that—for the Minister of Labour at the time, to write an order for the first city to be ordered to establish a properly functioning health and safety committee. Even then, when the adviser went to meet with the administrator, who was kept for an hour and a half sitting outside his office, when he went in with this order and these guidelines, he brought out of his desk, "This is how we would like to see the committee run," not how the minister had ordered it. I believe he did not understand what was facing him, the prosecution. He wanted to do this Mickey Mouse structure and he wanted a trial for a year.

I think that on the spot, because of the frustration of even the ministry people, he was given an education. You have heard already in our presentation and you have heard before from CUPE members our concern about people outside the work environment, management side, being on health and safety committees. We do have a problem with that and it is happening in London. Suddenly, out of the blue—remember the structure I told you about on the central committee of the co-chairs sitting on the central committee—at the whim of the employer, he has removed these people. He has put the health and safety officer as the co-chair on the committee. He is not on any other committee in the city of London, but he is the co-chair of the city of London.

Education, be it policy or education of the worker, was not in place as of two years ago in the city of London. It was because of the activity of Local 107 and the Ministry of Labour that while we were sitting talking guidelines on health and safety, suddenly the Industrial Accident Prevention Association for the first time was in

doing education of foremen and supervisors. Up until that time they had none.

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The city of London itself has been on probation. What I mean by "probation," they had a stop-work order against trenching over nearly, I think it was, a year and a half ago. No shoring, nothing, and a construction inspector happened to be passing and shut it down. They did not contact the members of the health and safety committee on the workers' side about that. I am talking about the employer. They got a member who was just newly appointed, had not attended a meeting, to attend a meeting of the Ministry of Labour and the employer, and suddenly the city was on probation for over a year. It did not happen for a year, but at one year and three months the city of London again was charged with a stop-work order on trenching again. This is ongoing.

The Ministry of Labour—and I must give credit to a few inspectors in the city of London—has got the guts to take this on, but this probation of a year is a good example of what is faced here. Medical surveillance that you saw in their brief is a good example from the workers' side of a watchdog system on how to discipline a worker. You are unhealthy—and I also question the confidentiality, if it was treated properly.

These are only a few of what is facing Local 107, and I would ask the chair after questions on a point of information. I would like to speak about the ticketing, if that would help the committee on the presentation earlier on.

The Chair: Is there anything more to the presentation that you wanted to make now?

Mr Divitt: No.

The Chair: Perhaps you could speak to the ticketing now briefly, because a number of members have indicated they want to ask you questions about your brief.

Mr Divitt: The ticketing itself that was spoken about, if you were to look at the Scandinavian situation where they are equal to the Ministry of Labour inspectors who can charge—there is a set amount, just like your parking ticket, on there, but if it gets to the extremes there is not. The certified worker in Scandinavia can also hand a ticket over as well for a stop-work order and that type of liability.

The construction branch in the Ministry of Labour, what they hand as you call a ticket is a summons. The reason for that is that small businesses, contracting businesses, can move day to day. You may lose sight of them. That we

agree with, but we also agree that an example—I am maybe getting a little bit off track because a point of information is a good example—is last December we had a serious critical injury in Scarborough in the city hall where a worker fell on his head from 16 feet. Until this day he is still in a coma. The worker who was on call on a Saturday received a summons, a ticket, which was handed over to the immediate supervisor. It was really the first time that I have seen members of management move so fast in the public sector to clean up their act, because that was there in front of them.

If that is a deterrent, correcting a situation instead of dragging on for six months, a year, to hear about prosecution, then so be it, because really what workers want is the protection in the workplace to limit or to remove that possibility. That is the clarification I would like to give at this time.

The Chair: Thank you, we appreciate that. We do not have much time left, but Mr Dietsch, Mr Mackenzie and Mrs Marland.

Mr Dietsch: Based on your presentation, it indicates to me that you have been getting a fair bit of support from the ministry with regard to trying to bring your employer into line. Did I interpret that right?

Mr Brand: Basically as it stands right now, I spend more time with the Ministry of Labour than I do with my own members and my bargaining unit on a daily basis.

Mr Dietsch: In trying to enforce some of the things that you have been pointing out to us today.

Mr Brand: Yes. We still have a number of outstanding ones that are under appeal right now.

Mr Dietsch: I guess I am a bit concerned in respect to the early part of your brief where you indicate that you feel that Bill 208, with the suggested amendments, I guess, from the minister—which to my way of thinking makes it one less than what we had before we started. I guess I am a bit concerned about that kind of comment. I interpret that to mean that you feel the additional joint health and safety committees that are going in, and the agency and associations, 50 per cent worker and 50 per cent employer, and the increased fines and the addition of having directors in companies responsible, and certified worker reps, and the additional training, and the partnership, all those things that are incorporated still within the realms of the bill, and that is just to name a few, that you

feel that is a step backwards. I do not quite understand that.

Mr Divitt: What we are talking about are the amendments put forward by Gerry Phillips himself for the neutral chair, the extra bodies on your bipartite agency, the statements he has said about "activity." For the public sector worker and, I guess, the workers in general, that is a giant step back. You heard yesterday from a health care worker who says you would not get a CAW worker lifting a 300-pound engine block but it is expected of a health care worker to lift a patient that same weight.

Mr Dietsch: But in relationship to the proposed amendments within the bill, the things that I outlined are certainly, I would hope you would think, a step in the right direction.

Mr Divitt: Bill 208 in its original form.

Mr Dietsch: But those things are still in there.

Mr Divitt: Yes, but we are talking about Gerry Phillips's amendments that he has put forward.

Mr Dietsch: So you do not feel that the individual right to refuse which is still encompassed within the bill and, in addition to that, the addition of the right to refuse immediate danger and also the joint health and safety committees being charged with the responsibility of looking at ergonomics are a step in the right direction. Many labour groups and many companies have indicated that the joint individuals on the workplace floor are those who are best capable to deal with those ergonomics or long-term concern areas. Would you agree with that?

Mr Divitt: I would say that if you are to look at who we represent in the public sector, the majority of our membership are social workers, health care, day care, nursing homes, hospitals. I would say, with the present form that you have put forward, that you are certainly not looking after their health and safety.

Mr Dietsch: So you do not think that they are positive. Should we do away with them then?

Mr Divitt: No, I am not saying do away with them.

Mr Wildman: Is that a threat?

Mr Dietsch: No, I am asking the question. I am trying to understand where he is coming from.

Mr Mackenzie: The hard sell.

Mr Divitt: Give the workers within those environments the right to refuse, like every other province has.

Mr Dietsch: Obviously if you think they are no good, then what are the choices? I mean, my friends seem to think there is some humour in that, but I take health and safety very seriously. Now I have been there, I have been on the shop floor, I know what it is like.

Mr Divitt: We have heard that about being on the shop floor, but once you are away from it for quite a time, I think there is something you lose.

Mr Dietsch: With all due respect, it has been two years. I do not think I have lost very much after 24 years on the floor, unlike some of the members who have not worked for a living.

The Chair: I do not think this debate is going anywhere. Can we move on?

Mr Wildman: I think it is going downhill myself.

The Chair: We have a couple of other people who want to engage in the debate. Mr Mackenzie.

Mr Mackenzie: I find it difficult to believe that the presentation you have given us is for the same city that we were hearing from this morning. It really makes me wonder at the information that was being given to us. Was this really the first city that the ministry had to order?

Mr Divitt: That is our understanding from the advisory service itself. There is one thing that we can do that the corporation did not do. We can supply the information like we have with only 50 orders. We gave you 50 orders because, I believe, it would have been too big if we had added another 30 or 40 orders of 1989. So we are talking 80 or 90.

Mr Mackenzie: Just one additional point then. I asked, and some people wondered why I asked it this morning, whether or not the city was in compliance in terms of the WHMIS legislation. Are some of the orders you have outstanding orders for noncompliance with WHMIS?

1500

Mr Brand: What I can say is that up to date now, we have had WHMIS programs. You have to understand, with our workplace, we have many different nationalities and workers who do not understand the English language. We have workers out there who do not know how to read and write. Right now, we have been told by management that we are on step 2 of WHMIS. We are going to go for the yearly update. I have recently contacted the Ministry of Labour and asked it to come in and do a thorough investigation to see if all the workers do understand the WHMIS legislation.

Mr Mackenzie: By the same token, you also have orders from the ministry on hazardous materials.

Mr Brand: There are orders in the package we give you today.

The Chair: Mr Divitt and colleagues, thank you very much for your presentation.

Interjections.

The Chair: Order. Thankfully we have another presentation. The next presentation is from the Strathroy and District Industrial Association. Mr Catlos, whenever you are ready. Welcome to the committee.

Mr Catlos: Do you want me to read my presentation?

The Chair: I think you understand the time constraints, so you can proceed.

Mr Catlos: Fifteen minutes.

The Chair: Okay.

STRATHROY AND DISTRICT INDUSTRIAL ASSOCIATION

Mr Catlos: Bill 208 is one of a series of legislative initiatives by a government committed to wide-ranging intervention in what essentially should be and has been a mutually accommodating and co-operative labour-management relationship. Workplace safety problems and solutions are vastly different in manufacturing, construction, mining and logging and in large, medium and small industry and they vary from one manufacturing sector to the next. I would like to give you an example. In the manufacturing industry, for instance, the safety problems and solutions are essentially long-term solutions because of ongoing activity, whereas in construction or some other fixed-cost operation, I think the business is looking for quick solutions to minimize its losses.

The bill comes at a time when Ontario manufacturing, under pressure from foreign competition, has already moved towards raising awareness of a common interest between employees and the enterprise through quality circles, plant safety programs and profit-sharing. Yet this bill, it seems to us, remains stuck in the time warp of labour-management antagonism which is out of place in today's world market economy. It is disturbing to entrepreneurs that the government of a province which owes its blessed prosperity to private enterprise and to the discipline of a market economy would spread its political agenda in ever-widening circles of intervention in the economy. We feel it is unhealthy for the provincial economy when those

of us in business are under siege by government departments to comply with regulatory requirements which will eventually smother our economy into stagnation.

The drafters of this bill must be convinced that the workplace needs more, rather than less, government tutelage. Is there any other place in the industrialized world where this philosophy has any validity? Those of us operating in a competitive market look to the government to strengthen the free market forces and to bring discipline into the workplace, not to tilt it out of balance. Government policies divorced from market reality are bad for the economy and will be too costly for the whole Ontario society.

This bill is creating a new arena for conflict in our already highly disputatious society and will lead to needless court challenges, rulings, appeals and other unproductive distractions for management. Anything that diminishes our flexibility will ultimately reduce our competitiveness and our viability.

Important amendments to this legislation have been proposed by the Bill 208 business coalition. I am not here to fine-tune a bill which, from the small business point of view, is so bad that no amount of tinkering with it would make it more acceptable. Instead, I would like to tell this committee a little bit about how business sees and discharges its social responsibilities, how business works and how excessive or arbitrary government regulations affect those who run manufacturing companies and create employment.

1. One of the flaws in Bill 208 is that it pretends to make workers jointly responsible for workplace safety with management when in fact management and the enterprise are and continue to be the only parties responsible, while worker or union representatives will be given power without a commensurate penalty for abuse and bad judgement. This bill is pretentious in its attempt to legislate the work ethic.

2. The second serious flaw relates to the decision to designate organized labour as representing the interests of non-unionized workers at large. This is like saying that the government would prefer to see all workers organized and pigeonholed so that it could control the economy more effectively. This is exactly the route that Mussolini and Hitler took when they organized Italian and German labour and industry to make them integral parts of their war economy.

3. The third and the most serious flaw has to do with the authority to stop work. It is simply unthinkable that an independent small manufac-

turer would ever tolerate a situation where an employee would be in a position to pull the plug on his operation. One of the main reasons we are in business is that we trust our own judgement, we value our independence and we are willing to take a risk. We are not prepared to share the first two with someone who is not prepared to take the third.

These measures are offensive and insulting to business. Work safety is recognized as a prerequisite to good management and high productivity. This attitude does not need to be reinforced by ramming worker committees down our throats. Industries, large and small, are assuming increasingly high responsibility for education deficiencies of their employees. They encourage and pay for advanced training, offer opportunities for advancement and nurture the work ethic and responsibility in their employees. We do this not because the government tells us to do it; we do it because we want to stay competitive and because it is good for business. We are already highly motivated to do the best job we possibly can and any coercion to do more will be counterproductive. What is needed is to find ways to motivate some of our employees to higher standards.

A measure like Bill 208 interferes with free enterprise as a building block of the provincial economy. It needlessly weakens workers' loyalty to the enterprise and their commitment to its corporate and their own personal success. It distracts and worries entrepreneurs and managements because it introduces yet another element of risk of doing business. Confrontational and fragmented social structure is the basis of a backward-sliding, declining economy.

Today the acid test of every government intervention in the provincial economy ought to be, "Will it enhance or diminish competitiveness of Ontario industry under the free trade agreement?" The FTA is a fact of life. It represents a major change in how manufacturing business will define its objectives, where it will expand and how it will stay competitive and profitable. I cannot think of a single economic or labour initiative of this government that meets this test.

One of the benefits of FTA was to have been a bigger potential market for Ontario startup manufacturing companies. This advantage has been largely nullified by higher energy prices, payroll taxes, workers' compensation rates, unreformed unemployment insurance structure, pay equity and other legislative bias in favour of organized labour. These are serious disincentives to well-established, viable manufacturing com-

panies but would be fatal to those developing a new product, nurturing a new market or incubating a new business. The proverbial level playing field, deemed so essential to fair competition under the FTA, is being tilted against Ontario manufacturers.

It is frightening and intimidating for a small manufacturer just to read the language of the bill and the proposed amendments. I quote: "Up-to-date legislation," "appropriate rights and authorities," "assurance of responsible behaviour by both parties," "rewards and sanctions," "accreditation," "internal responsibility system," "integrated collaborative approach," "collective will" and "alternate protocols."

Let me conclude. Bill 208, with all the complicated protocol and elaborate certification, will achieve less than could have been done by an experience-based workers' compensation reform. We feel this bill is so bad that it should be scrapped altogether.

1510

The Chair: Thank you for telling us so precisely how you feel about the bill.

Mr Dietsch: In trying to get an understanding, do you represent a particular workplace?

Mr Catlos: Yes. I do have a manufacturing company.

Mr Dietsch: Do you have a joint health and safety committee in that particular company?

Mr Catlos: No.

Mr Dietsch: You do not?

Mr Catlos: No.

Mr Dietsch: How many employees do you have?

Mr Catlos: Twelve.

Mr Dietsch: Twelve employees. Do you share with your employees or do your employees share with you particular issues relevant to the health and safety of a proper workplace?

Mr Catlos: In a small workplace, you do not need a formalized setup to deal with safety issues and solutions. It is an ongoing thing and the situation does not change from day to day. Either a piece of equipment is safe and it operates properly or something happens to it, in which case action is taken. Probably the initiative comes from the operator.

Mr Dietsch: How many accidents have you had in your workplace?

Mr Catlos: We have an excellent record. I think the other month I received a letter of commendation from the Workers' Compensation Board.

Mr Dietsch: You have not had any accidents.

Mr Catlos: No. Our biggest problem, and I do not mind saying this, is our employees who are bent on getting on workers' compensation, people who deliberately sometimes want to stage an accident or pretend an accident, and that ties us up in all kinds of negotiations and reporting and so on. That is our biggest problem. That is what I mean by discipline in the workplace. There has to be some kind of rating of the employees. There are people who go from one place to another causing accidents and there is no record that such employees are unreliable or unsafe. It is just a gamble.

Mr Dietsch: Do you have those kinds of employees working for you?

Mr Catlos: We had in the past. Yes.

Mr Dietsch: You had in the past—

Mr Catlos: Yes—

Mr Dietsch: You do not now?

Mr Catlos: Right now, no.

Mr Dietsch: Do you actually have a policy in respect of health and safety within your workplace?

Mr Catlos: Do you mean a formal policy, a document?

Mr Dietsch: Yes. I guess I am trying to understand how you operate within your workplace right now.

Mr Catlos: First of all, everybody wears safety glasses in an area where it is required. Everybody wears hearing protection in an area where it is required. We insist that visitors comply with these rules, and these are rules that are in place. We do not need a committee meeting to discuss them or amend them.

Mr Dietsch: It is interesting that you point out those particular two items, hearing protection and protection for the eyes, because it has only been in the last few years that hearing protection has come to play in many of the workplaces. I worked in a workplace where we were over 10 years before there was any kind of a formalized hearing protection scheme in place. I think those things have come about as a result of individual workplaces where they have not practised the safe practices. If you have a workplace currently operating that apparently, according to what you tell us, is reasonably good, I do not understand where the fears of the legislation are going to have—

Mr Catlos: The fear of the legislation is in that we feel that most manufacturing companies are probably on the same level, if not a higher level,

of safety consciousness as we are. We are a small company and our concern is that here we are being forced to set up a committee, tie up management and give a say in the running of our business to somebody who has no proprietary interest in the outcome.

Mr Dietsch: Sitting on the end of the table right beside you are 285 daisies, which labour in earlier presentations has indicated are representative of the deaths in the workplace and the amounts of injuries in the workplaces. It is incumbent on us, I think, to recognize that those kinds of fatalities and those kinds of injuries and ongoing compensation areas have to be addressed. That is the area that this bill is trying to encompass.

Mr Catlos: No. This bill is tackling the whole business community regardless of whether the potential for injury or death is the same. That is our problem with it. There are areas and industries that have a high rate of fatalities and a high rate of injuries and there are some that have very low. That is why I mentioned that if the workers' compensation premiums were based on individual company experience, that would be sufficient incentive for manufacturers to clean up their act.

Mr Dietsch: My last question to you is in relationship to the number of employers out there who have bad records, as you have indicated. Are you suggesting that they are the only ones who should be brought under the particular segments of the bill? Is that what you are saying?

Mr Catlos: Well, how are you going to make exceptions? This is an omnibus bill. It covers everybody. I feel that the whole approach is wrong. We in small manufacturing businesses are very, very touchy on things where the government comes and tells us, "You have to take one of your employees and one of your supervisors and make them into a committee and they are going to do this." Why should we? If our record is satisfactory, we do not want to do it.

Mr Dietsch: I think that is my point. The overall record is not satisfactory.

Mr Mackenzie: Mr Catlos, could you tell me—

[Failure of sound system]

Mr Catlos: This is an association that represents about 30 businesses, half of them manufacturing.

Mr Mackenzie: So you are essentially an organization of some 30 businesses.

Mr Catlos: Yes, we are.

Mr Mackenzie: Are those businesses in line with the thoughts that you presented to this committee?

Mr Catlos: Yes. At the monthly meeting in December we had a Dr McCloskey addressing our monthly meeting and we had an extensive discussion. My comments here are based on comments of my fellow members.

Mr Philip: I take it that this committee would have no trouble in getting a list of the companies that are part of the group.

Mr Catlos: I would be very happy to provide you with them.

Mr Philip: I am wondering also if you could give us a couple of examples of workers who have gone out and deliberately got themselves injured so that they could collect workers' compensation.

Mr Catlos: Do you want names?

Mr Philip: Yes. I would like some examples.

Mr Catlos: I am not going to give you names, but you just talk to my fellow manufacturers. They will support my statement.

Mr Philip: If you cannot give us names, can you tell us what they did? Did they go out and get a finger chopped off or bust an arm or what happened in the workplace that let them collect workers' compensation rather than continuing to work? You made the statement that the people were deliberately—

Mr Catlos: I will give you an example. I am not going to name any names, but I will give you an example. We had a case where an employee was playing softball or baseball and was injured. He came into the plant limping, and 15 minutes later he announced to a fellow worker that he strained his back lifting something, so we had to let him go home. He went to a doctor. The doctor examined him. Sure he has some pain or something. How does the doctor know whether it happened on the job? We know because he came in limping.

There was another case where a woman operator had a friend at the post office who tripped on a piece of string and was on permanent partial disability, collecting I do not know how much a week. If she would stage a similar accident in our plant, she would probably end up with some workers' compensation.

This employee was going to tamper with one of our machines in such a way that it could have resulted in a fatality. When you have a situation like that, it is unnerving.

Mr Philip: Did you charge this employee with fraud. Mr Catlos?

Mr Catlos: No.

The Chair: Mr Catlos, thank you for your presentation.

The next presentation is from the Ontario Public Service Employees Union, Local 108. Gentlemen, we welcome you here this afternoon. I hope you will introduce your group and then we can proceed.

1520

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 108

Mr Lane: Thank you, Mr Chairman. To my immediate right is Robert Anwyll, executive board member for the Ontario Public Service Employees Union, Region 1. To my immediate left is Duncan McKinnon from the Ministry of Health, an employee. To my immediate right is Jeff Margetts, the occupational health and safety representative from Local 108, which is the Elgin-Middlesex Detention Centre in London, Ontario.

The Chair: And you are Mr Lane?

Mr Lane: That is correct, sir. My name is Paul Lane. I am president of Local 108. I am representing the Ontario Public Service Employees Union today. I am also a correctional officer. I work at Elgin-Middlesex Detention Centre.

We are here today to present the concerns that correctional services and health care workers have with Bill 208, the proposed occupational health and safety legislation. Health and safety legislation is very important to us. I am sure when you hear the figures that I am about to share with you, you will understand why.

Between 1980 and 1988, 10,627 lost-time accident claims were filed at Ontario's psychiatric hospitals. By 1988, lost-time injury claims increased by 48 per cent. Disease claims rose by 80 per cent. That is a lot of injury and illness, much of it preventable, if we had the right to protect ourselves.

In Correctional Services, the picture is similar. From 1980 to 1988, lost-time injury claims increased almost 60 per cent and work-related disease claims went up by a staggering 542 per cent.

The time has come to do the right thing. You must give corrections and health care workers the help we need to do our jobs without having to risk life and limb. You on this committee have an opportunity to recommend improvements to Ontario's worker health and safety law.

If you follow the advice of some groups which have appeared before you, the situation for many workers in this province will deteriorate. Mc-

Donald's, for example, praised this province's worker protection laws and then asked to be exempt from it. Similarly, our employer, the government of Ontario, has chosen to exclude some of its employees from the laws which protect the health and safety of other workers in Ontario. There should be no exclusions, especially in the workplaces of the government, an employer which should set the highest standards of worker protection.

We hope you will agree with us and recommend the removal of those aspects of Bill 208 and the current legislation which create health and safety hazards and stop us from performing our duties well.

Mr McKinnon: The right to refuse: The Occupational Health and Safety Act limits the health care workers' right to refuse work where this would jeopardize the life, health or safety of workers themselves or the persons in their care, and that weighs heavily on our minds. It effectively inhibits employers from addressing our concerns.

Let me give you an example. On 20 April 1989, the Ministry of Labour took a complaint about an abusive patient at the London Psychiatric Hospital. The patient had attacked and severely injured a staff member, Laura Bonk. On 3 May, a Ministry of Labour inspector made two recommendations: first, to implement a policy on procedures to protect the worker; second, that the joint health and safety committee investigate and make recommendations to the employer, supervisors and workers about their duties during a work refusal.

On 2 November 1989, the same inspector had to be called again for a similar complaint. He wrote in his report, "After reviewing this complaint and a similar complaint dated 3 May 1989, this inspector concludes that the employer does not take the health or safety of its workers seriously." He concluded, "If the recommendations made in the 3 May report had been implemented and if the health and safety of the workers had been considered, then this complaint may not have been necessary."

Clearly, the joint committee was not working and there was nothing to force the employer to treat our concerns seriously.

Mr Lane: Over 3,000 workers in Ontario correctional facilities look to this committee to recommend changes to Bill 208 that would give all workers the right to refuse unsafe work. This is necessary because the current act exempts correctional officers from using the right to refuse entirely. Because of this, workers in

correctional facilities find there is little incentive for management to address their health and safety concerns. This lack of a right to refuse renders the joint health and safety committee ineffective.

Our management, that is, the government of Ontario, is encouraged by our second-class status to discipline and penalize workers who make health and safety complaints or who try to use the protection of the act. Correctional workers and health care workers face many of the same health and safety hazards. Injury at the hands of violent patients and inmates is a daily occurrence.

The frequency of attack and the resulting injury and disease have been documented in a study by Dr Susan Klitzman and Dr Jeanne Stellman of New York's Columbia University. The study revealed a disturbing number of attacks among OPSEU members in six Ontario facilities, including a cross-section of correctional, psychiatric and mental retardation institutions.

The study reported that, depending on the institution, 48 to 76 per cent of the staff and 65 to 98 per cent of the direct care workers have been attacked. Injuries resulted to 37 to 62 per cent of all workers and 52 to 75 per cent of direct care workers. Workers' Compensation Board records show that direct care workers, surprisingly, suffer more injuries resulting in lost-time claims than miners, police officers and firefighters.

Since that study, nothing has changed in the Occupational Health and Safety Act to prevent and reduce the rate of injury to correctional and health care workers, and there is nothing new in Bill 208 that will help us protect ourselves.

Correctional workers still do not have the right to refuse unsafe work. Health care workers still have limitations on their right to refuse unsafe work. The much-vaunted power of a certified joint health and safety committee member to issue a stop-work order is denied correctional workers, and it is subject to restriction for health care workers. Is this denial of our rights justifiable? We say no.

Experience has shown that those jurisdictions which have an unrestricted right to refuse do not report any injurious disruptions of essential services nor any threat to public safety. It is absurd that workers who are given tremendous responsibility to care for people and protect the public are not given the right to refuse, the right to protect themselves, because there is an assumption that they will abuse it.

1530

We feel all workers in Ontario have the constitutional right to equal protection under the

law, and instead of addressing these disparities, Bill 208 introduces further problems for workers. Under Bill 208 workers will be paid only during the employer's investigation of a health or safety refusal. If they continue to refuse and call for a Ministry of Health inspector, the pay stops. This defeats the whole purpose of the right to refuse.

Mr McKinnon: Joint health and safety committees: The Minister of Labour's own advisory council survey of joint health and safety committees in Ontario found that neither the internal responsibility system nor the joint health and safety committees were functioning effectively. Only a small percentage of the joint health and safety committees in Ontario complied fully with the statutory requirements of the legislation. That is because of the lack of enforcement in the act, and many committees are merely complaint registries. They do not resolve problems; they just document them.

Those committees which function well seem to do so if there is a strong union presence and if the workplace is visited often by Ministry of Labour inspectors. The trouble is that the presence of Ministry of Labour inspectors in correctional and health care facilities is rare indeed. That is not due to any unwillingness on the part of inspectors to investigate the complaints. It is because there is so much red tape when the government inspects the government.

Workers in correctional institutions do not have the right to refuse work, so there is no built-in, automatic mechanism to have an inspector investigate serious health and safety complaints. When there is a refusal in a health care institution, management can invoke the "imminent jeopardy" clause, thereby denying the worker refusal. Workers are all too often led to believe that an inspector will not attend, so they do not call the inspectorate, and because there are not enough inspectors, there are few scheduled visits.

Mr Lane: There are some fundamental problems with the internal responsibility system. We have seen them ourselves where we work, so we were pleased with the Ontario Law Reform Commission paper 53.

It said that the problem with joint health and safety committees is that they can only recommend solutions to our health and safety issues, but the action required to solve these problems is not the responsibility of the committees. The committees cannot initiate the improvements. The law reform paper agreed with the advisory council report that without the support of externally imposed and enforced regulatory

controls, the joint health and safety committees cannot function effectively.

The section of the Occupational Health and Safety Act that provides for the joint health and safety committees is written extremely loosely. The result is that there are constant debates over representation, the number and the timing of inspections and meetings, accident investigations, the right to receive information and time off work to perform their duties. All those debates have made committee meetings exercises in futility. In some instances, reports required under the act are not even provided by management to the joint committee. The Queen Street Mental Health Centre is one example of where the required reports are denied to the committee.

Committees in correctional facilities and health care institutions are lacking in training and resources. Bill 208 will improve that situation a little by certifying and training two joint health and safety committee members, one worker and one manager. They will have the right to stop work under certain conditions, but that right to stop work is still subject to such stringent checks and balances that it is virtually useless, and these same restrictions and exemptions applying to health care workers and correctional officers under the right to refuse will also apply to the right to stop work.

Surely workers in essential services must have the same right as everyone else to protect themselves. The Minister of Labour is on record as proposing to withdraw the unilateral right of certified members to stop work. Please make sure the right to stop work is not weakened from Bill 208. Without the right to refuse unsafe work and to shut down unsafe operations, workers are denied two very effective levers to encourage management to resolve health and safety issues on joint committees. What is the point of having joint health and safety committees if they are toothless and impotent?

This is made worse by the fact that there are no regulations in the Occupational Health and Safety Act which apply specifically to health care workers and correctional officers. All these factors, and the number of unresolved, unsafe conditions, increasingly frustrate my colleagues.

Frustration leads to incidents like the regrettable job action in correctional institutions across Ontario in October of last year. We were concerned, of course, about our own health and safety, but that is not all. The health and safety of the inmates, and the public too, mattered to us a whole lot. But this massive job action never would have happened if the employer had

fulfilled its obligation under the Occupational Health and Safety Act to resolve the complaints made by OPSEU workers.

I work at Elgin-Middlesex Detention Centre. My fellow employees have actually been disciplined when they were injured on the job. They were charged with "innocent absenteeism." Health and safety reps have been punished for doing their jobs. One person was denied a promotion, solely because of what was called his demanding attitude on the health and safety committee. Another worker, a health and safety representative, was reprimanded by his supervisor and his immediate superior for investigating a health and safety complaint in the building.

Mr McKinnon: We must have the right to refuse unsafe work, to protect ourselves from injury, disease and death. We must have the power to shut down unsafe work through certified worker members on joint health and safety committees.

All exemptions from, and any restrictions to, the right to refuse and the right to shut down unsafe work must be removed from the Occupational Health and Safety Act and from Bill 208. Subsection 23(1) must be repealed. Subsection 23(11) must be repealed, and amended so that an employer be forbidden to assign refused work to another worker before the safety issue is resolved.

Mr Lane: We must have the full power under the act to contribute to a healthy and safe work environment.

All workers must have the right to a joint committee. Joint committees should be made more effective by providing worker members of the committee the power to issue provisional improvement notices. Bill 208 must provide full pay during all stages of work refusal and stop-work orders. The section on 100 per cent payment must be deleted and subsection 23(10) of the act amended to guarantee payment at all stages of the refusal.

We must have vigorous enforcement of the law to prevent accident and disease in our workplaces. There must be penalties for those who abuse the health and safety of workers in Ontario. Section 29 of the act must be amended to oblige inspectors to issue orders and sanctions whenever a violation of the act occurs. Further amendment must provide inspectors with the power to issue immediate civil penalties in the form of fines whenever a violation occurs.

It is our hope that you will act to save lives and preserve health. Please recommend the improvements my colleagues and I are calling for. If you

do, we in Ontario will have occupational health and safety laws that will be world-class. The people of this province, in every aspect of our lives and work, deserve no less. Thank you.

Mr Wildman: Thank you very much for your presentation. What does it do to the morale of your members to be given on the one hand the responsibility by the government of Ontario to care for sick and ill people and to care for and protect inmates in institutions, to be given that kind of responsibility, but yet be judged by your employer as not responsible enough to exercise the right to refuse unsafe work responsibly?

1540

Mr Lane: Right now, the employees of the government in health care and also in correctional facilities feel morale is very low. The occupational health and safety issue is a big issue. Far more diseases are now cropping up, as well as the assaults on the workers themselves in the institutions. For management not to address those issues has brought frustration to the members under that set of circumstances.

Mr Wildman: I am referring to page 8 of your brief. These are really alarming figures. The studies show, "Depending on the institution, 48 to 76 per cent of the staff and 65 to 98 per cent of the direct care workers have been attacked." Again depending on the institution, "Injuries resulted to 37 to 62 per cent of all workers and 52 to 75 per cent of direct care workers." Those are appalling figures.

Then when you couple that with your reference to the inspector's report on page 5, where he says, "After reviewing this complaint, and a similar complaint dated 3 May 1989, this inspector concludes that the employer—that is, the provincial government—"does not take the health or safety of its workers seriously."

Mr Lane: That is correct, Mr Wildman.

Mr Wildman: What, if anything, is the provincial government doing to deal with these appalling figures on page 8, or are we still faced with a situation where, as on page 5, a provincial government employee, one of your members, I suspect—he would be one of your members—has to conclude that the provincial government, which is responsible for health and safety and workers in general in Ontario, does not take seriously the health and safety of its own employees?

Mr Lane: What they do, sir, is punish the employee for using workers' compensation and using innocent absenteeism.

Mr Wildman: So you are suggesting they are trying to cut down on the numbers without actually cutting down on the incidents?

Mr Lane: That is correct.

Mr Anwyll: Can I add that the last time I reported a problem, a member of the OPP racket squad showed up and investigated the complaint and decided that I was wrong? They dropped the charges against the contractor.

Mr Wildman: The racket squad?

Mr Anwyll: Yes. They felt that—
[Failure of sound system]

Mr Wildman: —possible fraud charge.

Mr Anwyll: Yes. They felt that I had salted the project with asbestos so that I could complain and they were investigating a possible fraud charge. They never proved anything. So I do not complain about it too much any more.

Mr Wildman: This is appalling. Perhaps the government members can explain why the government takes this attitude to its own employees.

Interjections.

The Vice-Chair: The next questioner is Mr Fleet.

Mr Fleet: Fortunately, I do not have to answer that question directly, but I do want to put the very same topic to the people making submissions here, because I was very bothered by the statistics that have been referred to.

What I wanted to find out was a little bit more about the study. When was it done? You mentioned there were six Ontario facilities. Which ones were they? Who commissioned the study? Presumably, it has been submitted to the government and there was some kind of a response. Who responded, and when, and what did they say?

Mr Lane: Right at the present time, the Stellman report was commissioned by the Ontario Public Service Employees Union independently. Six facilities were independently chosen by Professor Stellman. I can funnel that information to you, sir.

Mr Fleet: To the whole committee, hopefully.

Mr Lane: Yes, the whole committee. What was the other question, sir?

Mr Fleet: When was it done?

Mr Lane: It was done in 1989.

Mr Fleet: And has it been submitted to somebody at some level of the government?

Mr Lane: That is correct, it has been.

Mr Fleet: Where did it go?

Mr Lane: To my knowledge, there has been no reply. The government refuses to look at or implement the Stellman report.

Mr Fleet: Who did it get sent to and when was it sent there?

Mr Lane: I would have to check my records, but I would imagine it was sent to the Ministry of Labour.

The Vice-Chair: Any further questions?

Mr Fleet: Yes, I have another one, based on the comments that you have made on page 9 of your submission. You have indicated that there are other jurisdictions with an unrestricted right to refuse, and I am wondering if you could tell us which those jurisdictions are and what statistics you are referring to.

Mr Lane: I think if you look in the front part of the Occupational Health and Safety Act, the jurisdictions of people who have the right to refuse are police officers, firemen, etc—who are exempt.

Mr Fleet: When you said jurisdictions, you did not mean geographic jurisdictions. That is the way I took it.

Mr Lane: Not at all; worker jurisdictions.

Mr Fleet: Okay. The statistics you are referring to are Ministry of Labour statistics, or is it something else?

Mr Lane: Those are our statistics, based on the information that is provided to us from the government.

The Vice-Chair: I want to thank you very much for your presentation here today. You have raised some issues that we will have to take a look at.

The next group to appear before us is the London Home Builders' Association. If you would come forward, we would appreciate it if you would first introduce yourselves. You understand the rules: You have 30 minutes, which you can use up in their entirety or allow time for questions from the committee.

LONDON HOME BUILDERS' ASSOCIATION

Mr Zebregts: I would like to introduce the gentlemen who are with me. On my left is Dick Brouwer, the president of Brouwer Plumbing and Heating, who has over 20 employees in the London area, mainly in the home building industry. On my right is John Westgate, housing manager of Matthews Group Ltd. I am Michael Zebregts, first vice-president of the London

Home Builders' Association. I would like to thank you for giving us the opportunity to present this brief and to show our concern.

This brief is submitted by the London Home Builders' Association. Our association presently has 230 members, which represents in excess of 5,000 employees. The London Home Builders' Association is a member of the Ontario Home Builders' Association and the Canadian Home Builders' Association.

The home building industry in Ontario is a unique part of the construction industry. The safety record of the construction industry has steadily improved over the past 20 years, reducing lost-time injuries as well as fatalities in the workplace. The safety record of the Ontario construction industry is one of the best in the world.

The London Home Builders' Association is strongly opposed to Bill 208 and its negative impact on our members. While the London Home Builders' Association strongly supports the good intentions of improving workplace safety, we cannot support the manner in which Bill 208 attempts to achieve this goal. The bill in its present form will have a negative effect on safety rather than a positive one.

The principal concerns of our association are:

1. The creation and duplication of another agency that will undermine the work of the Construction Safety Association of Ontario. The Construction Safety Association of Ontario, through its training and education for all employees, has helped to significantly improve the overall safety performance in the construction workforce.

2. Our association supports the Ministry of Labour's efforts to improve safety. Because the labour force on the job site changes drastically from day to day, we cannot support the concept of having one safety representative, but rather insist that all workers be trained equally so that all employees are aware of work site conditions.

3. The bill is based on the idea of a fixed work site and a constant and structured workforce such as in manufacturing. These conditions do not exist in the construction industry, where projects can be short, with a daily variation of workers and skills. Recent amendments to the bill to accommodate these differences are inadequate.

4. Site management is a complex affair of layered, contractual relationships. The diffusion of stop-work power to nonaccountable parties actually undermines the idea of achieving the fullest possible safety accountability by management.

5. The labour force is composed of nearly 70 per cent nonunion workers. There is no representation of this majority of today's workforce under this proposed bill.

1550

We propose substantial amendments to (1) allow the Construction Safety Association of Ontario to remain in its present form that has produced outstanding safety results targeting education and training for all our employees; (2) continue enforcement and regulation through the existing system with the Ministry of Labour; (3) allow equal and fair representation of all Ontario construction workers made up of union and nonunion, as well as the existing Construction Safety Association of Ontario; (4) target education and training for all our workers, not just a certified few; (5) stop-work ability of the certified worker must be removed and replaced by an immediate access to a joint management-Ministry of Labour inspector; (6) continue to build on the participative approach to site safety management which has produced positive results to date.

Construction workplace health and safety has made significant progress through the efforts of the Construction Safety Association of Ontario. The single most important factor is that this association has stressed education and training for all our employees. Statistics compiled by both the Ministry of Labour and the Construction Safety Association of Ontario show a very positive trend in reducing lost-time injuries and fatalities in the past 20 years. The London Home Builders' Association fully supports efforts to continue these very positive results.

Enforcement and regulation are the central responsibility of government. The government cannot off-load its responsibilities into the hands of nongovernment agencies that are not accountable financially or politically.

History has shown that a decrease in government involvement—for instance, reduction in construction health and safety branch inspectors—has been seen as a contributing factor in the number of injuries. The number of inspectors was increased from 67 in 1985 to over 90 by the end of 1988. We have attached a chart and we are quoting figures from the Ontario Ministry of Labour.

The Ontario construction workforce has grown dramatically in the past 15 years. Today's workforce is in excess of 300,000 workers; 70 per cent of this labour force is nonunion. Under Bill 208, this sector of the workforce does not

have representation. Bill 208 must be amended so that all workers are equally represented.

The fundamental key to improving workplace safety is making all employees aware of job site conditions. Worker education, training and safety practice are the best tools to reduce workplace hazards. Our association again commends the work done to date by the construction health and safety branch and the Construction Safety Association of Ontario to achieve a better awareness of workplace safety for all employees.

Since 1979 all construction workers have had the right to refuse work they considered unsafe without fear of retaliation by their employer.

The London Home Builders' Association believes that a unilateral stop-work right, as proposed, is unnecessary, damaging and creates potential for manipulation by unscrupulous workers and does not necessarily improve worker safety.

We agree that unacceptable work practices should end until rectified.

We propose that the power of stop work by certified workers be replaced by a right to immediate conference with the employer representative and a Ministry of Labour inspector.

The construction industry is for the highest possible work site safety and worker health and is willing to accelerate the process in which it has been a leader. The process must continue to be developed and geared to education and training for all workers. The Ministry of Labour should redirect and re-emphasize its health and safety efforts to the area of training and education for improved health and safety. The ministry should also turn its efforts toward fostering and encouraging a climate of trust, co-operation and mutual concern for health and safety among the workplace parties. Health and safety is good business, and it is everybody's business.

Mr Carrothers: You have spoken in your presentation, I guess on the last page, about the stop-work right and mentioned the possibilities of manipulation. As you have indicated the right to refuse to do work that is considered unsafe currently exists in the law and I think you are saying that is a large protection now. What is your experience with the use of that right to refuse? Have you found that it has been used in a manipulative way? Do you have any experience within your members or within your businesses that could enlighten us in this area?

Mr Zebregts: I personally have not, sir.

Mr Westgate: Neither have I. I have not seen that as being a problem.

Mr Carrothers: It would be fair to say your experience is that the right to refuse work has not been used in a manipulative way or anything like that.

Mr Zebregts: Yes.

Mr Carrothers: You mentioned the Construction Safety Association of Ontario and you were talking about the safety board that is being created by Bill 208. Do I understand you to be suggesting—I may just have read this quickly—that the CSAO might be improved if you could have a board that is equally made up of labour, workers, and that should be something done in place of the superagency, so to speak?

Mr Zebregts: That is exactly what we are suggesting.

Mr Carrothers: You think the board or the CSAO, which right now I think does not have very much representation from workers—does it?—should be restructured.

Mr Westgate: Our concern also is that the Construction Safety Association of Ontario, if it is to be revamped under the condition as proposed by Bill 208, if that is what takes place, then we want to see that representation from across the workforce is there, if in fact it does take place in that manner.

Mr Carrothers: Some mechanism to choose different representatives of the workforce.

Mr Westgate: That is correct.

Mr Wildman: I would like to follow up on that. The page is not numbered, but on the second page of your presentation you are concerned about the representation for the 70 per cent, as you indicate, of nonunion workers, and then you defend the CSAO and say it should remain in its present form. Mr Carrothers suggested it might be revamped. You would agree, would you not, that the CSAO all along had the ability, if your association was so concerned about representing nonunion workers, to include nonunion workers on the board of directors of the CSAO?

1600

Mr Westgate: Our concern is that right now in the Construction Safety Association we feel that education and training, as particularly geared to small companies, are addressing our concerns. If a new agency is created, we do not know what the outcome will be so we want to make sure that if that in fact does take place there is representation of our sector of the workforce.

Mr Wildman: My question really is, why have you not done it already? If you are so

concerned about representing nonunion workers, why did you not do it?

Mr Westgate: There are no concerns at this time, because of the education and what we have been receiving from the Construction Safety Association.

Mr Wildman: I see. Then you also say, farther on, that "stop-work ability of the certified worker must be removed and must be replaced by an immediate access to a joint management-Ministry of Labour inspector." Could you explain what that means. What is a joint management-Ministry of Labour inspector?

Mr Zebregts: If there was a concern from a safety viewpoint of a worker, there should be an inspector on the safety board available to be an inspector on the job site, but there also should be management represented. What we are really dead against is a certified worker who may not be familiar with house building and not be familiar with the people employed. On any given day, such as this morning, in the workforce I may have had six or seven guys working on my house and there may have been four or five different trades. In the afternoon I have nobody. Maybe at four o'clock I have a plumber dropping in hooking up a sink or something.

I think we have a very unique situation there. If we had a guy come on our job site because he felt that it was not safe, being able to stop all work, then we feel that our employees would start relying on this guy. We feel that all our employees should be safety conscious and look out for each other.

Mr Wildman: I certainly agree with that, but I am not sure that having a certified inspector would necessarily mean other workers would not be safety conscious.

I just want to conclude with one last question on your last page, where you make reference to unscrupulous workers and you feel that this stop-work right might be abused by such workers. Would you be in favour of our strengthening Bill 208 to protect workers against unscrupulous employers?

Mr Zebregts: Sure, if you wish.

The Chair: Gentlemen, thank you very much for your presentation.

The next presentation is from the United Food and Commercial Workers International Union, Locals 175 and 633. Are they here? I know we are running a little ahead here, which is very unusual for this committee. It must be the—

Interjection: It's the neutral chair. You do so well that we are moving right along.

The Chair: No, it is the efficiency of the people in London that is doing it. One of you is Mr Lucas?

Mr Lucas: I am Michael Lucas. I have also brought with me Wayne Beedle, safety coordinator for Cuddy Food Products. It is my understanding that earlier one of the members said 3M had a breath of fresh air and I am hoping that these two briefs will also be a breath of fresh air.

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 175 AND LOCAL 633

My name is Michael Lucas and I am here to represent Locals 175 and 633 of the United Food and Commercial Workers International Union. Our locals represents over 40,000 members throughout the province of Ontario. We work in many sectors, including retail food, poultry processing, food and leather processing, manufacturing and health care.

I work in the poultry industry and I am a member of our executive board and plant chairman at Cuddy Food, plants A and B, a major poultry processor here in London. I am also a member of our health and safety committee and I am a health and safety instructor.

Bill 208 is very important to us and we strongly support the submissions of the Ontario Federation of Labour and that of our national union and sister UFCW locals. I do not intend to review all the criticisms you have already heard. Instead I propose to focus on three issues that directly affect our local union and specifically affect our plant.

These include the inclusion of the requirement that "imminent danger" precede a work refusal over activity, the relationship between the internal responsibility system and the right to shut down, and the reality of the good employer-bad employer division.

I will begin with imminent danger. In the food industry both in processing and in retail food, repetitive strain injuries are the number one occupational danger. We estimate that between 40 and 60 per cent of our members will have at least one of these injuries at least once in their work life. In poultry processing these numbers are probably higher.

Let me tell you how most poultry plants work. There is a moving line of shackles that are hung from the ceiling. Birds are hung upside down from these shackles. We cut wings, legs and other parts off the birds as they pass. In most plants these lines pass between 20 and 30 birds a

minute. Therefore if you are cutting, for example, let's say wings, you would cut between 40 and 90 cuts per minute depending on whether you are doing one wing or two. Other workers debone, process and package this meat, all following the speed of the line. Our plants are also cold and wet as we must control bacterial growth. Furthermore, in most plants a large part of our jobs are done with our hands raised above our waist, with hand and arm motions repeated over and over again.

That is why so many injuries like carpal tunnel syndrome and tendinitis affect us. These injuries do not start all at once. They are generated through activities, and in this case the repetitive motion, little by little over time. If caught early enough, these will heal and return to normal. If the problem is not recognized early, then they will become permanent injuries, which can prevent workers from ever using their arms again. There are members in our plants who will never pick up dishes again and who will never be able to pick up their children; their tendons are just too badly damaged.

I am sure you are thinking, "What does this have to do with imminent danger?" In the past most workers and probably most people in the province did not recognize these injuries. Workers looked well. They had no fever, no open wounds. As a result, they were commonly told that they were exaggerating and that they should just go home and soak their arms in hot water. Most workers did not take it seriously until they could not stand it any more or the pain got so great that they began to drop things. At this point there is little chance they will ever heal.

Therefore, recognizing this problem, our local has put a great deal of emphasis on early recognition and reporting. This has also meant some more repeated work refusals. Our members refuse to work on lines that are going too fast or which are involved in motions that they cannot handle, but this is standardly not defined as "imminent danger." In fact, the Workers' Compensation Board used to ask questions such as, "On what day did the tendinitis start?" It does not work like that. If you have to wait until there really is imminent danger, then more workers are going to be injured.

Fear of reprisal and lack of understanding will work together to injure workers also. If this requirement of imminent danger becomes part of our law, putting it bluntly, you will be putting more workers at risk if you accept this amendment.

Internal responsibility and the right to shut down: it was mentioned earlier that I am on my plant's health and safety committee. In our plant we are committed to making the internal responsibility system work. Together with management, we have taken an aggressive approach to both reporting injuries and trying to eliminate the conditions which cause them. We have instituted work rotation, redesigned how we work and encouraged early reporting and treatment.

Overall this is paying off for our members, as less of them are getting injured. We are also seriously committed to health and safety training, so much so that 10 per cent of our members at Cuddy have already taken the Workers' Health and Safety Centre's 30-hour program. That 50 per cent is maybe wishful thinking as we have over 850 workers.

We also have translated our health and safety concerns into six languages, including Chinese, Italian, Portuguese, Vietnamese, Cambodian and Laotian, and are trying to make the system of internal responsibility work. We have also now included Polish, and Wayne was telling me yesterday, Russian.

In my plant this process is working because both sides respect each other, and part of that respect is our genuine commitment to health and safety. The company has already accepted the right to shut down. This means more than simply the right to refuse not to do a specific job, but includes our right to shut the line or a department down if we really feel there is danger. If this can work in our plant, I am sure it can work in others. We see no justification for the proposed changes in this section of Bill 208.

1610

Good employer-bad employer: At this point the bill also includes the division between good employers and bad employers relative to the number of accident reports on file. The WCB has incorporated the same type of division into its assessment policies. Simply put, if you have fewer claims, you pay less money. You have been told about employers who hide claims, about workers being intimidated not to file or report. In the food industry we are very familiar with these problems. In poultry processing there are major problems, and in many plants it is our most vulnerable members, generally immigrant women or immigrants in themselves, who experience the greater harassment.

But I also want to tell you about the other side of the coin and what happens to an employer who does take health and safety seriously. I work for

Cuddy Food, as I have mentioned, and in my plant, health and safety has been taken seriously. We are seriously committed not only to early and complete reporting but to trying to eliminate the conditions which generate these injuries. We have an ergonomist who is on staff trying to help us with redesign of the work process. We also have a physiotherapy clinic within plant C which is run independently of the company by Victoria Hospital. The rate of injuries has declined, as has the severity of these injuries, but the number of claims being reported is still higher than other processing plants. Our union actually has compared the rates and knows that through encouraging early reporting, fewer workers are being injured seriously, but we are filing more claims. This is not true in other poultry plants in the province, and representing over 40,000 members, I think we are in a fairly good position to know that.

But it does not end there. As a result of more complete reporting, our plant has been fined an additional \$144,000 by the WCB, with an additional \$500,000 in fines still to come. If these fines come through, they will undoubtedly be taken out of the company's health and safety budget. That basically means that it is going to be taken out of training. This is why, as workers, we are supporting the company's fight against these fines; a system that defines the good employer as an employer or a company with fewer claims attacks us as workers. We, the workers at Cuddy Food, and our local, UFCW Locals 175/633, do understand this. "Lower" does not necessarily mean "safer"; it simply means lower for whatever reason. This is why we have asked Mr Beedle to come here and explain what is happening in our plant.

This is the probably the first time—at least it is the first time in my experience—that we have ever invited the company to join on a submission on health and safety, but in this case we think it is more than appropriate, so hopefully, considering the fact that Mr Beedle had a cast removed from his mouth earlier today, he will be able to read his own brief.

Mr Beedle: My name is Wayne Beedle, and I am here as an invited representative from Cuddy Food Products in London. I am currently the health and safety co-ordinator for the company, and as Michael indicated, we are an employer that is involved in poultry processing. At the present time we have approximately 850 hourly employees.

As a former inspector with the Ministry of Labour and a safety professional now working in

industry, I feel that I have some insight into the issues raised regarding this bill and the attempt by this government to satisfy all parties with a piece of legislation which in fact will not satisfy anyone. During the eight years I spent with the ministry, I was involved with both union and non-union workplaces, ranging from everything from cemeteries to schools to universities, municipalities, small and large industries. In addition to regular field work in London, I also worked for periods of time at the ministry headquarters in Toronto. In short, I have considerable experience in addressing concerns raised by the majority of the parties who have a vested interest in health and safety legislation in this province.

I would like to limit my comments to three areas, however: imminent danger as it applies to our industry, the right to refuse unsafe work as it applies to nonunion and union shops and the issue of training within the health and safety sector.

First of all, imminent danger: Within our company, as with all poultry processing plants, we face injuries which are created by repetition. Repetitive injuries are the fastest growing type of injuries throughout both North America and Europe, and more than 75 per cent of our injuries occur over a period of time. I would have difficulty, even with my experience, in substantiating a claim of imminent danger with most of the tasks performed in our plants. In my opinion this issue will, without question, pit employers against workers without providing a realistic means of resolving the issue within a reasonable period of time. The ministry does not, nor will it ever, have the manpower or the willpower to address this situation. The reality of working within this system is that it is a system that is trying to serve three masters—workers, unions and employers—and the decisions cannot be made fast enough or with sufficient clarity to address the immediate needs of industry or its workers.

The right to refuse: The right to refuse unsafe work must be protected as a right of the individual workers. While I am sure that all of us can point out cases where this has been abused, as a general statement and from my experience, I would suggest that this is the exception, not the rule. What is needed is more training and, at times, another worker to speak on behalf of some of the workers.

Many workers do not exercise their rights for a variety of reasons. Perhaps ignorance of their rights, particularly in small non-union shops, is a

leading cause, as well as a fear of reprisal being another notable factor in employees not reporting unsafe conditions that only they could be aware of. Training, support and reassurance can make the present system work properly with no need to attempt to appoint one worker in each workplace with the authority to shut down operations. Employers will oppose this change to the bitter end, and will use the following arguments.

The union may select a militant worker who abuses the system. I think we all heard that prior to the introduction of this legislation, it was not proven to be a fact. It is not good business for a union to appoint an inappropriate person. I would suggest that is not going to happen.

However, the union may select a worker who backs away from the situation because of pressure. Workers lose work, workers lose security because a person takes a step that may be taken. That representative may well face some pressure and may back away from using the authority that he has.

There could be continuous confrontations when production is involved, especially during periods of contract negotiations. I do not think that is a new one. That has been around for a long time also.

In assuming responsibilities of an inspector, the worker will not have adequate backup resources available, which are quite often needed to make an informed decision.

Training: We agree completely with the Ontario Federation of Labour, and I assume the government is correct when it proposes to set up a training agency. The difficulty we have, and I assume many employers will have, is how the organization will be set up and funded. I would suggest that the committee review the Swedish system in detail. I have had the opportunity to review their system, and not only does it appear to eliminate the confrontational element, but it also provides consistent country-wide training programs and incentives for employers to make changes. Everyone benefits.

In closing, without the co-operation of employers, the unions and the non-union employees, the government can legislate until it is blue in the face. Changes will be made in the large unionized workplaces and the rest will be ignored.

The Chair: Thank you, gentlemen. I think I speak for the committee when I say that we would love to examine the Swedish system in detail but our travel plans are restricted.

Mr Fleet: How about starting Friday?

The Chair: I had one question, Mr Lucas. On page 6 of your brief you talk about fines. Are those basically the assessments from the board you are talking about rather than fines?

Mr Lucas: Yes.

The Chair: Okay. Mr Fleet.

Mr Fleet: Thank you very much. First of all, I am sure that I speak on behalf of all the members of the committee when I say that we are delighted to see a presentation coming forward from both sides of the proponents in these matters. It is the first time that has happened. The comment that was made by Mr Beedle that one of the concerns of business is that there would be continuous confrontations, particularly during contract negotiations, in my view, is exactly correct. I think that is one of the fundamental fears that various business people have. There is something else that has come up, and this was primarily in Mr Lucas's presentation, that deals with what we have been referring to as repetitive strain injuries. Both of you may want to respond to this.

Although you urge on us to avoid the use of the imminent endangerment provision, in fact, I have found this presentation to be the most persuasive evidence that I can remember hearing on this committee about why the need to look to some other kind of remedy is important. Here you have a plant where the right to stop work apparently exists and you are not using that, not as the solution, for repetitive strain injuries.

1620

The notion of the right to refuse work really is not relevant, for the reasons that you quite eloquently pointed out. It is because the repetitive injury problem does not start at a particular point in time. It is an accumulative, chronic kind of situation and I noted that you have taken six different ways in your company to cope with it.

You have work rotations, redesigning, early reporting and treatment, training for all workers—you say close to 50 per cent have additional training—translating the information so that it is in other languages and, lastly, the notion that a line or a department can be closed down if you think there is a real danger, which is beyond what most companies seem to do, although other good companies seem to do those kinds of things.

Although I am quite concerned about the problems of people having repetitive injuries that develop over time, it does not seem from the evidence we have previously heard or from the evidence you have given that giving a worker the right to refuse work instantly, like you do where

there is a dangerous machine, is going to be the solution.

If that is the case, the provisions that is in Bill 208 is not going to be harmful to workers at all. Rather the comments that were made by the minister that you have to have joint committees looking at ways to solve the problem in a larger sense, the things I have just gone through that you mentioned, that seems to be the more logical route. Can you expand any further, or respond as you like.

Mr Beedle: From a company point of view, I think other people have said the same thing: Health and safety is big business. It is smart business to solve the problem. Within our workplace, it was a rapid-growth organization, very successful and dynamic organization. That created its own set of problems. Included in those problems could be labour relations. You begin to break down trust, and what comes with that is the health and safety issues then turn into all confrontational points of view.

The president of our company recognized that it needed a health and safety person but it also needed somebody who could begin working and addressing those kinds of problems. When I joined the company, those were the terms and conditions of my accepting the job.

The first thing I did in probably the first meeting—the people I met within the organization happened to have been Michael Lucas and the union representative. What they did is they identified the frustrations, the anger that they were dealing with in trying to resolve health and safety issues. But we also identified that people did not understand the legislation, that people were reacting to situations that, with training and some experience, they could deal with in other ways.

We hit a day when we finally hit success. We began the training and we trained the workers. Every single training program that we have includes a segment on the right to refuse, how that is done properly, step by step, workers' rights and responsibilities to supervisors and the employer. We do that in every single training program.

When we knew that we had hit success was when we hit a day when we had five little Portuguese ladies who had worked for the company for years say, "I refuse to do that job because I think it is unsafe."

I do not know how that hits other people, but when you are dealing with a population that has an inborn fear, as many of our employees do, of the authority figures and you are attempting to

get it to do something such as tell us when something is wrong and you finally get a day when five little ladies band together and say, "I am going to refuse," that is success to us.

We began moving and moving from that. We do not have perfect days. We have very few work refusals. But we also have established a system within that sets up a step before a work refusal where all of the parties that would be involved in a work refusal are included at an even earlier stage.

Our training is done with supervisors and workers sitting across the table from each other at all times and they talk backwards and forwards. Some of our courses are up to 30 hours long and that is what began to make the change.

Mr Lucas: If I might just address two points that you brought up, the one about the refusals coming at contract time, I would have to reject that idea, bearing in mind that—and I am sure it is still in there—Bill 208 originally said that if used frivolously, then certification would be lost.

For what could be just a few moments in time, to lose credibility and certification over a frivolous act would be stupid on any health and safety representative's part. It just would not make any sense to lose something that you have to work so hard to get. I am sure the committee has heard some of the ideas on what the training would involve in order to become certified. You are not going to throw that away just because your union is going up against maybe a stubborn company in trying to get your point across.

I am sure that collective bargaining does not need health and safety representatives going out and making frivolous claims against workplaces. It is just not going to happen in my eyes, and I am sure Wayne would agree with me on that point also, the fact that those things are happening at Cuddy Food. We are not Utopia. Things are working better than they did at one time. We are making more inroads than we used to. I think that comes from not only the mutual respect that we point out but the fact that we can argue and still work together.

These things did not happen overnight. I have seen these changes over the past four years now and they do not happen immediately. Our company may be a bit different in the sense that we can work together. This is not the case in all workplaces in Ontario. Some of the things that happen where I work do not happen across the street.

The Chair: Can we move on.

Mr Wildman: I will just be very brief. On the page where you listed the five management

concerns that are most commonly put forward against having a certified worker have the right to shut down, when you made your presentation, you argued parenthetically against the first one, that the union might select a militant worker, and then you went on about number two, which you indicated might be a problem. Then, number three, as you presented it, "There could be continuous confrontation when production is involved, especially during periods of contract negotiation."

Mr Lucas just spoke briefly about that. Are you aware of situations where, through collective bargaining, management and labour have actually set up a certified worker or similar type of thing in their collective agreement where a worker-inspector has the right to inspect and shut down? If you are, could you comment on whether in your experience, either in management or when you were working for the ministry, in those cases collective bargaining has affected the working of the collective agreement on the worker inspector?

Mr Beedle: From my experience with some of the large companies where they have a full-time union health and safety representative, you can say that has been negotiated within the collective agreement. Whether he in fact has the power in writing to do that—in fact, what we see is that where we have a situation and where the worker has direct advice from a consistent member on staff—and a good example happens to be the situation they had at Ford Talbotville. I cannot comment on it now. They would go to one person who understood not only the politics but what needed to be done and could give direct advice.

That worker representative many times eliminated work refusals rather than created work refusals. He tended to maintain some control over what could be militant elements within the local that could damage the health and safety program that they were trying to work out with the company. If Ford Talbotville, with their traditional confrontational approach, to even having coffee together, can work that out, it can work in many more places. We are not the exception.

In presentations and from my experience in dealing with a lot of large industries, what is being proposed under Bill 208 is how some of the implementation is to take place; it is not what is being proposed. A good company has nothing to fear by Bill 208. A bad company, unfortunately, will likely be missed if we maintain this whole approach of good guy-bad guy. In our particular situation, we are already a company that has been

determined by the powers that be to be a bad company.

Mr Wildman: Because you are reporting so much?

Mr Beedle: Yes.

1630

Mr Carrothers: I am not quite clear. What happens in your plant now if something is determined to be unsafe?

Mr Beedle: What happens now?

Mr Carrothers: What would happen?

Mr Beedle: The worker identifies the problem to the supervisor. If the supervisor does not respond immediately, then the worker goes to the health and safety rep. They are always available also.

Mr Carrothers: And a decision to shut down some sort of process, how would that be taken?

Mr Beedle: The control and the decision-making process in any quasi or actual work refusal happens to rest with the worker.

Mr Carrothers: To stop work himself?

Mr Beedle: Yes. If the worker is advised by his union representative that nothing is wrong and the worker is advised by the supervisor that nothing is wrong, the worker still makes the final decision.

Mr Carrothers: On his individual—

Mr Beedle: Yes.

Mr Carrothers: Would there be a process to stop work in your system, or is it some sort of collaborative decision based on the individual's decision to continue or not to continue working?

Mr Beedle: In the system that we have, first of all, the situation stops when the worker identifies the problem.

Mr Carrothers: When he comes off and then there is a consultation, he, the worker, would decide whether he wants to go back on the line. But the decision is made by the workers themselves, not somebody else.

Mr Beedle: Yes. That has been explained in detail to our managers, our supervisors, our health and safety reps. None of them are in the position to make the decision on behalf of the worker. Each party is there to represent one view or another. If the union representatives feel that there is no hazard, what we have had to say to them is, "You must take the position of the worker and present the point of view of the worker if the worker has problems presenting it for himself."

Mr Carrothers: But it is based on the individual's right to refuse work?

Mr Beedle: Yes.

Mr Carrothers: You indicated that there have been changes in investments, I guess, made in safety in your plant. What has happened to the safety record since those changes were made?

Mr Beedle: Inadequate reduction in accidents to not warrant additional fining. We have the Workers' Compensation Board, the Ministry of Labour and the Industrial Accident Prevention Association referring people to us for assistance on one hand, and we have the financial branch fining us on the other hand.

We produced our own training material, we produced our own training videos that we make available to other industries. We are working with a number of companies in the area who have similar-type injuries. We are working with the University of Waterloo, the University of Western Ontario, and we are all involved in those projects. We have taken the leadership role.

Mr Carrothers: You have reduced accidents in the workplace?

Mr Beedle: We have reduced accidents, certainly not to financially get us out of the jackpot.

Mr Carrothers: I guess just one final question, maybe following up on Mr Fleet's line of question. You were talking about the strain injuries, the carpal tunnel and those types of injuries. I believe one of the proposals sitting before this committee is that those issues should be referred to the joint health and safety committees within the workplace. Are you saying that is not inadequate? Are you saying that is a way to deal with it?

Mr Beedle: First of all, the health and safety committees are aware of what is happening on repetitive injuries, but what we have done is that we have split off from there considering the work of the health and safety committees. On our ergonomics committee, we have representatives who are also members of the health and safety committee. So we have split it off because of the volume of work involved.

Mr Carrothers: But dealing with those types of problems through some committee processes is the way you are handling it and the way you would suggest of dealing with. Is that what I take from you?

Mr Beedle: It will only work that way. We do some great designing of corrections and we find out when the workers who do the job go and test

them, they point out all the stupidity that we had involved in our decision-making.

The Chair: We will go a little bit over and give Mr Mackenzie and Mr Miller a short question each.

Mr Mackenzie: I just wanted to say that it is indeed a breath of fresh air to have management here with the union on an issue like this and not telling us everything that is absolutely wrong with the bill. But the area that I wanted to cover with you is the third area, that there could be confrontation during contract negotiations. While you did not answer it as much as you did point one, you did say that is a fact of life currently. At contract time there always is an increased sense of potential confrontation.

Mr Beedle: I would point out that we are just in the final stages of contract negotiations. We do not know at the present time whether we are going out on strike or not and we certainly had no incidents of this nature.

Mr Mackenzie: That is the very point I was making. If you can reach the kind of accommodation you have reached in your operation, giving workers the rights that you have given them in this particular case, they are not likely to throw it away even during contract negotiations. It is the point I have been trying to make all along in this committee; that is just a misperception on the part of people who do not understand workers in the job.

Mr Lucas: As Wayne pointed out, we are currently involved in negotiations with Cuddy's plants A and B, and we have had no increase in health and safety concerns coming out of those contract negotiations.

Mr Miller: I have just one short question. In the poultry industry, is there any way of dealing with that? That is a repetitive job, no doubt about it. Is there any tool so they could do it with a machine rather than do it by hand?

Mr Beedle: First of all, understanding the process and what is involved in the process, at the present time, to my knowledge, there is not. However, what you also have to understand is that industries, particularly poultry and particularly chicken, all across the United States are getting slaughtered, literally. The injury rate is to the point where the whole program makes 20-20, and we have all of this.

We have attended three different equipment shows in the past six weeks looking for equipment that will take some stress off what we do. That is not ever set aside. We also take equipment, and with our engineering depart-

ment, we take what is available and try to design and customize it to do what needs to be done. The fact of the matter is that when you process, as in our plant, 55,000 chickens on a shift from a live bird to a skeleton, there is a lot of repetitive motion.

The Chair: Thank you, Mr Miller. Mr Lucas, Mr Beedle, we thank you very much for a very interesting presentation this afternoon.

The final presentation of the afternoon is D. H. Howden and Co Ltd, Mr Stevenson. Is Mr Stevenson here? Last but not least. I know it is the end of a long day, but we are glad you are here and look forward to your presentation.

Mr Stevenson: By the sounds of the news reports, I was glad I was not the first one this morning.

The Chair: Oh, they were grossly exaggerated.

Mr Stevenson: That is what I thought.

D. H. HOWDEN AND CO LTD

Mr Stevenson: My name is Rick Stevenson. I am director of corporate planning for D. H. Howden and Co Ltd.

Mr Chairman and ladies and gentlemen of the committee, it is a privilege to be before you today to clearly state Howden's position regarding the introduction of Bill 208 as legislation to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

First, I would like to take a moment to give you an overview of D. H. Howden and Co Ltd. We are a wholesale distribution centre for hardware and decorative products, selling to both franchise and independent hardware and building supply businesses situated in cities and towns all across Canada. We also sell to export accounts in places such as Bahamas and Bermuda. We are located in London and employ approximately 420 people. We own the rights to the Pro Hardware franchise in Canada, which we market to hardware retailers, and we are licensed to market the Do-it center franchise to building supply businesses in this country as well.

Currently in the Ontario marketplace, we sell goods to 185 Pro Hardware stores and 24 Do-it centers as well as hundreds of nonfranchised accounts, each of these being owned by independent business people employing anywhere from 2 to 300 employees per location. Thus, we take our responsibility of addressing this committee very seriously, as the the impact of Bill 208 will affect the business life of not only ourselves but the vast majority of our retail hardware and building supply customers.

The issue of health and safety in the workplace is not really up for discussion. We at Howden view health and safety with the same importance as strategic planning and production improvements, because without the same level of concern, we jeopardize improvements as a total. We applaud reasonable initiatives to improve on health and safety in the workplace. This should not, however, be interpreted as an approval for passage of Bill 208 into legislation as we object to the bill and respectfully request that it be withdrawn as a method of meeting an objective of safer workplaces.

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I should point out that we at Howden are not in the habit of voicing objections publicly to proposed legislation and our presence here should signal to this committee and the government of Ontario the deep concern that we and our dealers have for Bill 208.

Our reasons for objecting to Bill 208 can be capsulized under the following headings. These represent our major concerns: The right granted to an employee to stop work in our warehouse or our dealers' stores; the omission of representation of the majority of the workforce from the proposed health and safety agency; inclusion of small business operations in the legislation; the substantial costs in both time and money that must be allocated to the implementation of Bill 208's regulations; the opportunity for the creation of friction and dissension in resolving health and safety issues.

I would like to take a few moments to elaborate on these issues.

1. The stop-work provision: There is no question that the mere mention of a stop-work provision, with the overwhelming ramifications such a provision has, arouses anger in any business person. We at Howden take a great deal of time investigating all safety aspects of the equipment and the machinery we purchase. As a matter of interest, most suppliers of these items include safety features as part of their sales presentations, knowing the high priority safety plays in our business.

Our production functions evolve around these equipment purchases and all aspects of the safety procedures are discussed in great detail with the employees involved.

The magnitude of our operation makes it impossible for any one person to be thoroughly knowledgeable in all aspects of the safety features of each job function and piece of equipment. As an example, the controls of our mechanical and electrical room are the responsi-

bility of two people who are specialists in the operation of this strategic area. Conversely, the operation and maintenance of our conveyor system is controlled by two other employees who have extensive training in their operation.

No one person is qualified or could be considered qualified without years of training to make decisions to stop work due to a perceived danger in these two areas. The cost of such a work stoppage would be staggering as our production is tightly geared to our ability to ship orders to our customers when they require the goods.

We believe the existing right-to-refuse clause provides workers with the necessary tool they require to ensure their safety. In addition, our supervisors are charged with the responsibility of maintaining a safe work environment for our employees.

For the year 1987, the Canadian Centre for Occupational Health and Safety reported the following statistics. Injuries are recorded as follows: Back injuries accounted for 27 per cent; exertion through strains and sprains, 40 per cent; falls, 15 per cent; falling objects, 19 per cent.

For the most part, these are common-sense injuries, where personal judgement on the part of the employee might have averted the problem. This is where the education and commitment to improvement must be focused. Money invested in giving employees as a whole the knowledge to work safely is a more practical solution to solving the issues of safety in the workplace rather than the creation of another costly committee with stop-work authority to attempt to change a course that may not need changing.

2. The health and safety agency: The vast majority of nonunion businesses and employees are not represented on the agency, and therefore it is safe to say they lack a voice in the direction of health and safety in Ontario.

In the province of Ontario, 70 per cent of the workforce is not represented by organized labour. These employees address their needs with their employers through different ways than that of organized labour. Most issues are resolved in a nonconfrontational manner, and unfortunately this is not the case in all organized labour settings. The exclusion of this group of nonorganized employees in Bill 208 is a serious shortfall.

In the case of businesses, fewer than 15 per cent of the businesses registered in Ontario are unionized and are not interested in giving organized labour a loophole with which to actively influence their operating activities.

Small business, being affected directly by Bill 208, is not represented on the agency. We understand there is a proposal to form an advisory committee to report to the agency. This is not acceptable to small businesses, as they would not be included in the decision-making process.

3. The inclusion of small business in Bill 208: The ramifications of including small business in Bill 208 can and will mean the demise of some of these operations and seriously impact on all others significantly. This all comes about during the most competitive and costly time frame ever experienced by this group of entrepreneurs.

As one of our customers, J. McKeen, owner of Paramount Hardware in Hamilton, clearly stated to his MPP in a letter addressing Bill 208:

"In the early days"—and he has been in business for 37 years—"free enterprise flourished in Canada and it was a pleasure to be in business. However, through the years, we have seen government intervention at the municipal, provincial and federal levels giving us more paperwork and increasing our costs of doing business."

He goes on to say: "Now Bill 208 is being forced on us by the provincial Liberal government. What will be next?....(Bill 208) will be a severe blow to small business. We would like to get back to free enterprise without the continued and costly intervention of governments."

Another customer, B. Copp, president of Copp's Building Material Ltd in London, says: "It is difficult to understand why the government of Ontario keeps bringing forth new legislation which continually adds to our cost of operations and makes our businesses less and less competitive with other jurisdictions."

I might add that Mr Copp's remarks are particularly relevant at this stage as the free trade momentum is just beginning to be recognized by our American counterparts who view Ontario as the apple where their cost of penetration into the market can quickly be recovered due to the potential sales volume available to them.

Any increased costs of operation inflicted needlessly by governments on small business must be withdrawn. I say "needlessly" with good reason, as small businesses in the hardware retailing area are not the culprits responsible for significant health and safety problems.

A review of the top 10 most dangerous jobs in Canada determined by Labour Canada and Statistics Canada between 1985 and 1987 lists the following: (1) truck drivers and transportation drivers, (2) general labourers in the mining

industry, (3) loggers, (4) general construction labourers, (5) fishermen, (6) pilots, (7) carpenters, (8) insulators, particularly in the areas of asbestos and fibreglass, (9) pipefitters and (10) farmers. These occupations account for close to 40 per cent of the fatalities during this time frame. Retailing job activities are not represented in any of these classifications.

Small business cannot afford the costs, time requirements or the commitment of training employees for the implementation and ongoing administration of Bill 208.

4. Cost of Bill 208: The staggering cost of Bill 208 will create serious pressures on business in general. Dr Norman Shulman, director of the ministry's policy and planning branch, is quoted in the October 1989 publication *Training* as "estimating that up to 50 hours of training could be required to certify a committee member."

Further to the basic training, there must also be time allocated under Bill 208 for the following: preparation time for all safety committee meetings of at least one hour; an increase in the minimum number of safety committee members from two to four people if there are 50 or more workers; payment for time spent by workers, including standing time during work refusals; payment for time spent by certified members for health and safety investigations, and payment for time spent away from business for the purposes of detailing issues to the agency.

To compound the problem, especially for small business, the certified worker would have to be replaced on his or her shift by someone else hired either part-time or by overtime requirements, as most business operations today are conducted with a minimum amount of manpower required to get the job done. This creates increased costs that cannot be absorbed by business. So it must be passed on to consumers through higher prices.

In a marketplace that has such a highly competitive climate created by competitors who do not have to deal with the same costs, the playing field becomes unequal and, unfortunately, small business with its higher cost cannot survive.

I suggest to you that this scenario can take place in some situations as a result of Bill 208. Bill 208 creates additional demands in both time and money on management as well. The additional reporting requirements to the various groups along with detailed planning requirements create unnecessary responsibilities for ourselves and the retailers we service.

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5. Confrontational setting for resolving health and safety issues: the mere existence of the committee in the form outlined by Bill 208 creates a confrontational attitude between management and employees that need not exist. The overriding issue is to resolve a workplace hazard that might lead to a dangerous situation for employees. The requirement to inform a certified member and report the situation in writing deflects from the expedient resolution of the problem.

In the May issue of *Occupational Health and Safety*, Vivienne Walters, an associate professor in the department of sociology at McMaster University in Hamilton, conducted a survey of employees in 10 random companies to understand their response to health and safety issues. She reports that "among the 164 workers who described a specific problem that had bothered them, 29 per cent had done nothing and had discussed the problem with no one. The others were twice as likely to raise the issue with their supervisors than they were to raise it with their health and safety representative."

The reason for this is obvious in that the employees are looking for immediate results to correct a problem, not a forum to debate its consequences.

Further evidence of the conflictive nature that could exist came to light following a recent health and safety training seminar held by the Industrial Accident Prevention Association, which members of our safety committee attended. During the breaks our people were surprised to hear the difficulties faced by some groups, where things like holes in the floor were held up at the committee level for debate between labour and management, while at our operation the issue of the floor is resolved before commenting on it has a chance to happen.

In order for companies both big and small to flourish in today's environment, the operative word is "teamwork." We are in this together. There must be a co-operative approach to resolving issues affecting business performance by communicating with each other.

Headlines from *Report on Business* dated 23 October 1989 read: "CAW Rejects Concept of Work Teams as not in Workers' Interest." This is completely contrary to the concept around which Bill 208 is intended.

The development of committees and agencies under Bill 208 will not resolve the issue. It is a grass-roots resolve of the businesses and their employees who co-operatively want to be suc-

cessful in today's business world. This co-operation cannot be legislated into existence. The costs involved will be wasted and taxpayers will be the worse for it.

In conclusion, I must reiterate both Howden's commitment and that of our dealer network to the issue of improved health and safety in the workplace. There is no question that the 285 industrial deaths recorded in Ontario in 1989 are 285 too many. The question is, will Bill 208 reduce this number? We think not. We believe the existing legislation is adequate to guide employers and employees to create a safe workplace.

D. H. Howden and Co joins forces with the attached retail hardware and building supply dealers who have submitted letters objecting to Bill 208 and we request that it not be passed into legislation.

Mr Carrothers: I want to focus on this question of costs and the impact on small business that you are outlining here. We have had a number of witnesses come before us and make the point, and I think you are making the point, that a safe workplace is good business. I am taking them to mean by that that in addition to one's concern about one's employees and not wanting to be hurting individuals in your workplace—obviously an injury costs a lot of money and it is just good sense to make sure that those do not happen in the workplace. An injury can cost far more than the money spent to prevent it.

We seem to see that in many workplaces an awful lot of money is invested, to use that term—it is not a cost; it is an investment in a safe future—to make sure that the workplaces are safe. In fact we have had at least one individual, in dealing with insurance underwriting, who pointed out that the insurance company may look at how you focus on safety when it determines what your insurance premiums are going to be for your property and casualty protection. In other words, it all comes together.

Bill 208 may very well be changing somewhat the way things are going to be accomplished, but it would seem to me from what I have heard that in many workplaces a great deal of effort is already being made and expenses being paid on safety. Maybe you could delineate more the substantial costs, in excess of what a good employer or someone who is taking care in a workplace would already be expending, that you see being caused by the bill, because I am not quite sure I see that.

Mr Stevenson: I think it is our opinion and that of the dealers I have been able to talk to over the past while that the cost of health and safety is something that is an internal cost that has to be borne by a company. The part that is objectionable to those people I represent is that of the outside costs that have to be incurred through this. We see that as being unnecessary.

Mr Carrothers: Can you be more specific as to what those outside costs would be.

Mr Stevenson: I think it is the requirement of the extensive training that we are looking at here; at this point in time, the inclusion and development of committees in retail outlets that have five people or four people.

Mr Carrothers: I do not think they are covered. They would not have to have that under the legislation.

Mr Stevenson: We understand that with five or more people, you are required to—

Mr Carrothers: With five or more people, you have a committee, yes, but under five, no.

Mr Stevenson: In the situation of retail hardware stores and building supply yards, a lot of places just meet that minimum. When you start to take into account part-time people, which we understand has not been differentiated from as far as not being considered part of the payroll is concerned, it would put you to that five.

Mr Carrothers: You mentioned training costs in a workplace. I think this would vary with the workplace. In other words, if there are more dangers in the workplace, more training is necessary. It would seem that given the prudent way of operating a business, you are already going to be making sure that your employees understand, just because of the point I made right at the very beginning.

Do you really see that much extra training coming into play here? I guess that is what I am having trouble understanding. Would that expenditure not already be made? Perhaps the form is shifting a bit, but would the expenditure not already be made in a properly operated workplace and someone being careful and so on?

Mr Stevenson: There is an expense that is attributed to the cost of health and safety in the workplace. Our fear would be that it would expand outside the workplace and the commitments to dollars and cents would be quite excessive.

Mr Mackenzie: On page 5, you say, "For the year 1987 the Canadian Centre for Occupational Health and Safety reported the following statistics: "Injuries are recorded as follows: back

injuries 27 per cent; exertion (strains, sprains, etc) 40 per cent; falls 15 per cent; falling objects 19 per cent;" and then you go on to say, "For the most part these are commonsense injuries where personal judgement on the part of the employee might have averted the problem." I find your comments both a little callous and a cynical type of approach.

I am wondering what you would say to the four Portuguese women we heard about just before you made your presentation, at Cuddy, who complained about the repetitive motion and strains or about the number of women who now have literally lost the use of their arms, whether at checkout counters in retail operations or people at as the repetitive operations at the chicken plant.

What would you say to the workers who died when the elevator plunged down? That was a falling object at the Scotia tower in Toronto. It seems to me that what you are doing with that kind of comment is simply doing the same thing we had in some of the IAPA advertisements which in effect said the stupid worker would not be injured if he did not do this, this or this.

Mr Stevenson: No. Believe me, I am not discrediting the intelligence of workers at all. I look at the first two, back injuries and exertions, as an area where perhaps the word common sense is incorrect in that it is having the knowledge to do exactly what those women did at Cuddy and that is recognized there was a problem and approached management to have the situation resolved.

The issue of an elevator falling from the top floor at the CN building is not something that I can associate with. Is there any way of finding out whether or not that is going to happen, and the question is, will Bill 208 resolve that elevator from falling?

Mr Mackenzie: To list just these common-sense issues, before they had the training, which is now extensive at the Cuddy plant, these women were doing these operations without knowing why or without the guts to refuse.

Mr Stevenson: That comes from worker education and investing the money, as I pointed out later on, in the employees to make them knowledgeable about the legislation that is already there and the dollars that are available to them, or pardon me, not the dollars but the avenues that are available to them to resolve these outstanding issues.

Mr Dietsch: I would like to follow up a little bit where Mr Mackenzie was going in relationship to the same line of questioning. I am curious

to know if these are just assertions on your part or whether there are some data that you have that back up this being commonsense injuries, as you referred to them. What kind of information have you had available to you that makes you draw that kind of conclusion?

Mr Stevenson: I would not want the presentation to be hinged around the commonsense aspect of it. The point we were trying to make here was that with proper education internally, people recognizing what their job activities are and what the functions are, working with people who are trained professionals, whom we hire—we have ergonomics experts on staff who work with our employees and teach them how to lift properly, move heavy objects and so on—these types of injuries can be reduced significantly. Someone going to a bin and looking at a 75-pound keg of nails would have the knowledge, would have the common sense, if you will, to say: "No, I'm not going to move that. I'm going to go and get some additional help."

Mr Dietsch: It is basically a comment on your own and does not necessarily come from any factual information.

Mr Stevenson: That is correct. The facts are the percentages, as they are listed.

Mr Dietsch: With respect to the earlier presentation as I understood it, business and labour worked together with regard to the authority to stop work. I guess from their presentation, as I understand what I was able to draw from some of the questioning of my colleagues, it has been reasonably well run and it seems to be congenial, if you will, with business in that particular establishment. This leads me to wonder why you would draw the conclusion that business in general would not be able to develop the kind of close working relationship that particular business was able to do.

Mr Stevenson: I believe that especially in small business this type of relationship exists. The right to refuse to do the specific job is there now. Even in our operation, if there is a problem that is seen by an employee, he does not do the job. They come to us and we talk about it, but the point is that we go and resolve the issue right away and correct the problem.

Mr Dietsch: Basically, the individual worker has a good working relationship, and that is the way I understand many of the small businesses as well.

Mr Stevenson: Especially in small businesses where they are friends. It is a very close

relationship when you work with two or three people all the time.

Mr Stevenson: The other point I want to ask you is on page 6 of your brief where you mentioned that you "are not interested in giving organized labour a loophole with which to actively influence their operating activities." What exactly did you mean by that?

Mr Stevenson: It has been expressed to us that the agency that would be developed, which is representative of 50 per cent of that agency, would be made up of unionized labour. The small business people we have talked to are not interested in having that particular agency involved in their operations at all.

Mr Dietsch: You realize that the work of the agency would be to develop a body of information for certification of workers and would in fact

be development of information with respect to training, and the delivery system of the training mechanism would be the same as it is now through the safety associations. I do not understand how that would influence whether a workplace is organized or unorganized.

Mr Stevenson: Again, I can only reiterate the information that was passed along to us.

Mr Dietsch: It is not a concern you have. Can I ask you personally if it is a concern you have personally. Thank you.

The Chair: Mr Stevenson, thank you for your presentation this afternoon. We are now adjourned until tomorrow morning in downtown Windsor at 10 am.

The committee adjourned at 1708.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Vice-Chair: Mackenzie, Bob (Hamilton East NDP)

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Fleet, David (High Park-Swansea L)

Harris, Michael D. (Nipissing PC)

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Wiseman, Douglas J. (Lanark-Renfrew PC) for Mr Harris

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Luski, Lorraine, Research Officer, Legislative Research Service

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Ashton, Jim, President

McLellan, Hector

Burridge, Rick

Francis, Bill

From the London Chamber of Commerce:

Johnson, Bruce, Chairman

Thomas, Jim, Chair, Employee Relations Committee

Darling, Bill, Employee Relations Committee

From the Oxford Regional Labour Council and the Energy and Chemical Workers Union:

Colbran, Wayne, Financial Secretary, ORLC

Basken, Reg, National President, ECWU

Gray, Gary, Chairperson, Health and Safety, ECWU

Ublansky, Daniel, Legislative and Health Co-ordinator, ECWU

From Dow Chemical Canada Ltd:

Fullerton, Ted, Corporate Director of Safety

Egedahl, Dr Ron, Corporate Medical Director, Corporate Director of Occupational Health

From the City of London:

Rowe, H. Ross, Director of Personnel

Howard, David, Occupational Health and Safety Technologist

From the London and District Construction Association:

Dool, Tom, General Manager

From the Canadian Auto Workers:

Mason, Randy, Recording Secretary, Local 27

Askew, Gerry, Health and Safety Representative, Local 27

Hopper, Gordon, Health and Safety Representative, Local 27

Witherspoon, Rick, Vice-President and Health and Safety Training Co-ordinator, Local 1520

From 3M Canada:

Brooks, Jack, Vice-President, Manufacturing

Gloin, Jim, Manager, Public Affairs

Howse, John, Manager, Corporate Loss Prevention

Rowcliffe, Peter, Assistant Secretary and Assistant Corporate Counsel

From the London District CUPE Council:

Divitt, Joe, Ontario Health and Safety Representative

Thompson, Bill, President

Brand, Wayne, President, Local 107

From the Strathroy and District Industrial Association:

Catlos, Peter V., Chairman

From the Ontario Public Service Employees Union, Local 108:

Lane, Paul, President

McKinnon, Duncan

Anwyll, Robert, Executive Board Member, Region 1

From the London Home Builders' Association:

Zebregts, Mike

Westgate, John

From the United Food and Commercial Workers International Union, Local 175 and Local 633:

Lucas, Michael, Executive Board Member

Beedle, Wayne, Occupational Health and Safety Co-ordinator

From D. H. Howden and Co Ltd:

Stevenson, Rich, Director, Corporate Planning



No. R-11 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Resources Development

Occupational Health and Safety Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Thursday 8 February 1990



Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 8 February 1990

The committee met at 0959 in the Ontario and Erie rooms, Hilton Hotel, Windsor, Ontario.

OCCUPATIONAL HEALTH AND SAFETY STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Chair: The standing committee on resources development will come to order. We are pleased to be here in Windsor this morning and for the rest of the day. The resources development committee was given the task by the Ontario Legislature of holding public hearings on Bill 208, an act to amend the Occupational Health and Safety Act and the Workers' Compensation Act. It is our task to hold hearings across the province. When those hearings have been completed, we then sit down as a committee and go through the bill clause by clause to determine what, if any, amendments should be made to the bill. At the conclusion of that process, the bill will be reported back to the Legislature.

It is in the order that referred the bill out to us that it shall be referred back to the Legislature as a whole on 26 March, which is a week after the Legislature resumes for the spring session. We have been in a lot of cities in Ontario already: today in Windsor, then next week we do the eastern Ontario part, then back to Toronto, then one more trip up north to Thunder Bay and Dryden.

We are informal as a committee, but there are some rules. We are an extension of the Legislature and as such certain rules must be followed. One of those rules is that people who appear before the committee are here as our guests. We have invited them here, we want them here, we want to hear their views and I would ask that you not harass or heckle witnesses who are appearing before the committee even though you might most profoundly disagree with them. I ask that you adhere to that rule of this committee. It is no more than we would insist for you when you were making a presentation.

Windsor is a designated bilingual district and as such we provide instantaneous translation. I

regret to say that today the translation equipment did not arrive.

[Interruption]

The Chair: I said we regret that. However, we have people who are willing to sit with anyone who needs translation services. We do have the translators here. We do not have the equipment and the tent where they sit and so forth, so if anyone does need that service we are pleased to provide it, and we regret very much that the equipment simply did not get here.

The first presentation of the morning is from the Canadian Auto Workers.

Mr Wildman: Are you going to introduce the committee?

The Chair: Oh, I should introduce the committee. Thank you, Mr Wildman. The committee is made up of members in roughly the same proportion as there are in the Legislature. In this case that means six Liberals, two New Democrats and two Conservatives, and of course a neutral chair. On my right is Doug Carrothers who is the member for Oakville South.

[Interruption]

The Chair: We really do want you to hold your applause until the end. Beside Mr Carrothers is Mike Dietsch, the member for St Catharines-Brock. To my immediate right are Gord Miller, the member for Norfolk, and Ron Lipsett, the member for Grey. Just taking his seat is David Fleet, the member for High Park-Swansea in Toronto. On my left is Bud Wildman, the member for Algoma. Beside him is Bob Mackenzie, the member for Hamilton East, and just taking his seat is this stranger to everyone, Dave Cooke, the member for Windsor-Riverside. I am Floyd Laughren and I represent the riding of Nickel Belt up near Sudbury.

We shall now proceed with the first presentation from the Canadian Auto Workers. Mr White, if you would introduce your colleagues, the next 30 minutes are yours.

CANADIAN AUTO WORKERS

Mr White: I am glad to appear in Windsor today with this committee before an unbiased audience. With me is Bob Nickerson, the secretary-treasurer of our union and vice-

president of the Ontario Federation of Labour, who really has been involved deeply in the discussions surrounding Bill 208, and Bob Chernecki of our staff, who is the director of our health and safety department. We have here with us today a number of CAW activists in health and safety matters throughout the province of Ontario.

I might say we have a brief that I will refer to several times, try to get my discussions in and then leave some questions open. I think it is important that we are having this hearing today in what is an important city in the auto industry, important for the history of our union. It is important also to address some of the questions I see being raised by employers in this province about competitiveness of health and safety, costs of health and safety, etc, so after my presentation I am prepared to discuss those matters with any of the members of the committee.

I might say, as president of the union, I am kind of shocked to have to appear here this morning, because the history of this bill was one in which there was consultation with both labour and senior business leaders in this province about trying to come to grips with an important change in health and safety, and we thought we had in fact done that and had a minister who brought to the government of the day a reflection of those discussions. It did not in any way meet all of our expectations, but it was another important step in the history of health and safety and another major step that we thought was being taken in the last 10 years.

We now find ourselves in the position of having to rehash the issues we hashed with the former Minister of Labour, of dealing with amendments that very closely reflect Canadian Manufacturers' Association positions, which I think, quite frankly, do not meet with the facts of the day.

You will see in our presentation that the history of our union, I think, is one of clear recognition of our responsibilities in health and safety. Over the last number of years we have worked with the major employers and small employers who we have in this province, to develop important health and safety training, to develop important health and safety programs. We start referring to that on page 4. We recall vividly the pre-1978 era when governments and employers had little vision for improvements. We see some of the same issues being raised today as were the issues that were raised when we were talking about the right to refuse at that time as well. Of course, we were not alone in the

process. The labour movement generally was mobilizing and putting the whole question of health and safety much more on the political and the collective bargaining agenda.

In collective bargaining, employers continue to resist progressive health and safety programs. Now, however, most of our major collective agreements, as I said, contain sophisticated programs that include chemical hazard training and full-time plant and office health and safety representatives.

In the major auto plants we have negotiated full-time health and safety representatives paid for by the company and we have national co-ordinators in the Big Three as we have in some of the other sectors of our union. You will hear from some of our employers today who now say that everything is fine and that they work together with us, but they resisted these programs initially very strongly, as is happening today. But over time a great deal of mutual respect developed between us.

Our members have the right to develop lockout procedures and ergonomic programs. WHMIS training, health and safety committees and skilled trades specialized training are now provided to a lot of the major auto industry which we represent, and most of that came about by the collective bargaining process.

I think it is fair to say that workers, because of the hazardous conditions at work, the chemicals, etc, are now thirsty for knowledge and education, and this cannot be achieved by a 10-minute video during lunch period. They have to have substance. There have to be dedicated instructors and time off the job to ensure the maximum participation of the members and the workers in the various offices and enterprises.

In our union we have entrenched the programs in collective agreements. We have also spent a great deal of money internally in our union in developing paid education leave programs that cover a wide range of subjects, including health and safety issues. We take the position very clearly that if a worker is not free of injury and disease, then he is really not free to enjoy the fruits of his employment or the benefits of life itself.

To date we have trained over 100,000 workers, all the way from, as we make reference in our brief this morning, deepsea fishing boats and fish processing plants in Nova Scotia and the rest of Atlantic Canada to airline workers, to parts workers, to the battery processing plants, to salt mines, etc. We have done, we think, a responsible and respectable job in terms of trying

to address what we can around the issue of health and safety within our jurisdiction.

We have, along with the Workers' Health and Safety Centre of the Ontario Federation of Labour, trained close to 500 CAW health and safety instructors who are available and who many times find themselves teaching not just workers, but management representatives, the whole history and the process of health and safety.

Now, with over a decade of practical experience and in spite of our bargaining programs, we know very clearly the shortcomings that we find in the legislated protection for workers. This was evident at McDonnell Douglas aircraft and de Havilland Aircraft, now Boeing, where if you read the record of health and safety in this province we had to go to the mat with those employers, with massive shutdowns. In spite of repeated visits by the Ministry of Labour, those employers were refusing to comply with the law. Those are not small employers of garages of six or seven people; those are large, multinational employers with thousands of workers.

Confrontation of that kind should not be necessary to ensure the health and safety of the workers of this province.

There are today in this province many small and mid-sized facilities that continue to ignore the health and safety problems of working people. We do a lot of organizing in our union, and I can tell you our organizers report to me on a regular basis that the issue workers are raising when they talk to them in the plants and offices that are unorganized is the matter of health and safety.

For anyone to suggest that somehow unorganized workers really have an input into health and safety, or that somehow unorganized workers will lead on health and safety changes ignores completely the reality of what goes on in unorganized workplaces. With some of the places where we go to talk to unorganized workers, it is really a disgusting situation. The first thing we find ourselves in is in a confrontation with the employer on the matter of health and safety. We say this not just as a selfish position from our membership but also for unorganized workers in this province. In most cases, again, we are finding a great deal of opposition from those employers.

1010

We talk on page 11 of our brief about the need for change and the whole question of the enforcement mechanism that must remain with the government as a guard to ensure workers that progressive changes in the workplace become a

reality. Lack of enforcement compromises any legislation, especially in the area of health and safety. Just imagine what would happen if the Ontario Provincial Police did not have the enforcement mechanism of the law. A lot of Ontario citizens would be killed daily and that is what is happening in our workplaces.

Contrary to the current minister's belief, the internal responsibility system in a large percentage of our facilities is not working well. In spite of the fact that we have relationships which are good, there are a number, and a large number, of our committees that continue to be very frustrated. I can take you to plants where we have collective agreements where we have had health and safety leaders fired for refusing work at the workplace. Sure, they ultimately get back to work, but we have had to struggle to make a lot of changes and there are a lot of places where we are extremely frustrated.

We say in our presentation that the mechanics of the internal responsibility system have never been more clearly articulated. The minister's Guide to the Occupational Health and Safety Act describes the internal responsibility. I do not propose to read this to you because I am sure all of you are familiar with that.

Under this system, the Ministry of Labour expects the parties to govern and ensure worker health and safety. Clearly this is not the case. This committee, sitting for almost a month now, must have heard repeatedly from the labour movement in this country how inadequately the internal responsibility system is functioning.

To illustrate, you can go back and look in April 1983 at the comprehensive speech that was made to the Ontario Legislature by MPP Elie Martel, who was then the chairperson of the Ontario New Democratic Party task force on occupational health and safety and articulated the Not Yet Healthy, Not Yet Safe report. The task force, pushing for stronger legislation, travelled the province and repeatedly was told how the internal responsibility system has failed. Again, you will see some of the quotations there.

A survey of 3,000 joint health and safety committees, conducted by the minister's advisory council, eighth annual report, 1985-86, produced disturbing results. All of those are laid out for the committee on pages 17 and 18 of our presentation. In the report it said that the workers of this province lack the ability to play a full role in the internal responsibility system, that unless the joint committee is backed up by the Ministry of Labour and unless there are improvements in legislation, training and integration in the work-

place, "the joint health and safety committee leads not to self-regulation but rather self-deception."

Then there is another quotation from the Ministry of Labour's own advisory council which was made up of a number of labour, government and academic people.

We quote some statistics and I am not going to read all of those because they are a matter of record, I am sure, before this committee.

One worker dies in this province every working day. I said yesterday and I repeat this morning that if we had a policeman in the province of Ontario who was killed every working day and we had the demonstrations that happen around when a policeman is killed every working day in this province, I suggest to you that there would be a public outcry and there would be a legislative outcry about what was taking place. The facts are that this is happening to working people in the province every day.

I want to say very candidly that I get really sick and tired of employer hysteria on this. There is not one manager, there is not one labour relations expert, there is not one employer who is involved in those statistics. Every one of those people are working people. That is why we say that we have a right and we have actually more than an equal right than employers in this province to determine the agenda on health and safety, because those people are working people and those are the people who are getting killed on the job every day, in spite of the efforts of the labour movement and the government of the day. So all of those statistics are there for people to see.

We have a lot of wringing of hands about employers and others in our community who talk about the lost time by strikes and lockouts. When you compare it with the lost time for injuries in terms of occupational disease and deaths in this province, it is seven times more than takes place in strikes and lockouts.

Imagine if we had that record of strikes in this province. What would the employers be saying about the legislation and labour relations? What would they be saying about the labour movement in this province? Yet they come and somehow present the case that Bill 208, even in its amended form, is not satisfactory to them. I say to you that those statistics which you all know very well are clearly a plea and cannot remain lost in the government bureaucracy or the employer hysteria.

On 28 November, representatives from our union met with the Minister of Labour (Mr Phillips) to present and discuss our views on Bill

208. The total brief, I believe, is attached for your review, so I am not going to take time to go all through that.

Let me deal on page 24 with the health and safety agency. Bill 208, as it was originally announced, created a structure that recognized the necessity of having labour and management share their views and responsibilities in workplace health and safety. We thought that was indeed a positive approach and one that would ensure our full participation in health and safety programs. In addition, we would have direct input involving the question of the expenditure of the \$46 million that is allotted to training in this province, including training and research into health and safety matters, which we quite frankly have never had our share of up until now and which we think we should have full participation in.

Our participation would clearly enhance the agency's initiatives for current and future health and safety programs. It would ensure worker acceptability and strengthen the compliance process in the workplaces of Ontario. I do not think there is any doubt that unions like ours and other major unions in this province that have done the job internally on health and safety can play an important role within this structure.

The approach to certification training should have no less than three weeks paid time with an annual update of no less than 40 hours per year. We point out a major flaw we see with this and that is the whole question of the absence of minimum training for grass-roots membership.

We thought that those initiatives would clearly enhance Bill 208 and would help reduce the accident rate in this province which really is an important goal.

The question of delivery is answered in the establishment of equal funding for employer associations and the Workers' Health and Safety Centre, but there also should be minimum requirements for training because we do not think people should just get money unless there are some minimum requirements: the training is done properly, the education is done properly, and we really are expending the funds in a manner that is broadening the education and ultimately reducing the deaths, injuries and diseases in the workplace.

In addition, we want the workers to be able to seek medical information and treatment at workers' clinics where they are comfortable with professionals who know and understand the industrial world.

It was disturbing to see the current minister propose amendments that clearly compromise the agency structure. We oppose that view. We think that labour and business in this province should be able to take this step forward on their own without a neutral party. We ought to learn by experience. If down the road some place it is obvious we cannot do this, then I guess somebody is going to have to come and help us settle that. But surely it is almost like collective bargaining. A third party out there should not be called in unless it is absolutely necessary.

In most collective-bargaining situations we find our way with employers. Sometimes you reach compromises, but we have to find our way. If given this responsibility, labour is prepared to sit at a table and help find a way to do this job properly. I suggest there are some employers in this province who not necessarily reflect the hysteria of all others who will also, if given that mandate, do that. We think that is an important step and we do not want to go into third-party involvement here. We think that if the minister really wants to promote what he talks about, then he should leave the structure the way it was.

The small business advisory committees should have some labour participation because otherwise you have a contradictory position that amounts to patronage and bias. Also, the safety associations' right to determine representation on their board of directors negates the agency mandate. We think it is up to the agency to determine the representation on the various boards. You may find that we end up with situations where there are boards with only those people who used to be on them sitting on them.

Let me deal with the whole question, as we do on the next page of our brief, about the right to stop work. What we are hearing from the employer community today is, quite frankly, reminiscent of what we heard in 1979 when workers won the basic right to refuse. We do not think the basic right to refuse has been abused or flouted by workers in this province because it really is quite a decision for a worker to make against his employer on the basis of the right to refuse. Again, I want to talk about unorganized workers. I would ask anybody to show me unorganized plants where workers have taken the courage, the right to refuse, to correct health and safety problems. There are really no grounds for the employers' overreaction here.

1020

I also cannot handle the hysteria about this leading to plant shutdowns and loss of jobs in this province, when in fact employers today are

closing plants almost every week and are taking them to Mexico or the United States because of nothing to do with health and safety. They are making their decisions to shut down plants in this province without regard to workers, so I do not think it is an unnecessary stoppage to shut down a plant for a day or an hour to correct a health and safety problem. So I think it is an important decision for us to make. You are aware of the situation in the Ontario mining industry, where in fact they do have that and you are aware of some international situations which we referred to in our brief.

I think the whole question of having a certified health and safety representative having the right to shut down the job is extremely important because if you are properly trained and you are certified, like legislators who understand legislation, health and safety trained people understand health and safety. There are situations at the workplace where they may find an unsafe condition that they say should be shut down, that the worker, for whatever reason, does not think so.

We refer to a situation here on 30 December. A construction worker hired on 27 December 1989 by a Toronto area contractor fell 42 feet to his death while performing construction work at the McDonnell Douglas facility. The issue of responsibility remains a question, but what is painstakingly accurate here is this death could in fact have been prevented. Construction at this plant is a common sight.

For many months throughout the period of change, the health and safety representatives—those are ours, we do not have to do with the construction, but these are health and safety representatives—raised the concerns about the procedures and the processes and the training of the construction workers who were on the site. It is a matter of record that the CAW health and safety representatives highlighted the safety of these contractors. On 24 August 1988, 17 October 1989 and again on 21 December 1989 the representatives reduced their complaints to writing, with copies sent to senior levels of McDonnell Douglas management and the Ministry of Labour.

Although the letters did not specifically address the dangers related to working on heights, they did in fact pinpoint the contractors and highlighted McDonnell Douglas's responsibility. So it was abundantly clear that we thought, as health and safety representatives, there were violations of the act taking place by the contractors in the aerospace plant. Our worst

fears were realized when this worker—who really had little or no training, and there was a clear absence of health and safety worker representatives on the site—died by an accident that took place. We believe that is nothing short of criminal and the responsible parties should feel the full weight of the law.

We asked ourselves a question. If the CAW health and safety representative in that facility had been a certified representative with knowledge he would have had from hazard training saw that and went and said, "That job has to be shut down," and called in the Ministry of Labour inspector, I believe we could have saved the worker's life. I think that is what we are talking about. All of the political debate is all very interesting and all the machinations across the province are interesting, but what we are talking about are workers' lives. I am sure there are unions that can come before you and repeat these kind of instances on a fairly regular basis. We think these are important matters that you have to take into consideration.

I think the suggestion that we now move to a certified situation where we have good and bad employers really makes absolutely no sense at all. They did not get to be good employers just by accident. It was because we lead on the issues, it was because we got to understand each other better on the issues. Unorganized workers and bad employers are not going to lead in health and safety in this province. So on the question of the right to refuse and the certified health and safety representatives' right to shut down, it has to be with all employers in this province so that we can say to those employers who are so-called bad employers in this province: "We have this with some good employers. It has not been utilized much in the last three years. Why? Because obviously that workplace is moving better on health and safety, and therefore you have to meet the same tests." I think the good and bad employer situation does not meet that at all.

You will have some auto industry people come before you today, I am sure, some of the friends whom I see across the bargaining table, who will talk about the whole question of the danger of allowing employees to shut down the assembly line. There are people in the auto industry who will take a position. If a worker sees a real quality problem in terms of the product coming down the line, he should in fact have the right to shut down the line. If you are going that step, and I think that is an important step, then surely when you are talking about important health and safety matters, you should have the same right. I can assure

you that those rights are not abused as far as our members are concerned.

The second issue gets to the payment. The proposal is that we have a certified health and safety representative who can go to a job and say, "I think that is an unsafe job and I'm going to shut it down." We have 50 people in that department who now have to stand around while we sort this out, and they get a penalty for that. What is that supposed to do? Is that supposed to somehow encourage the workplace health and safety representative to continue to take his activities in the full knowledge that the job is unsafe? Of course it is not.

It is designed to have the 50 people say: "What the hell are you doing over here? I'm losing a day's pay while you go around and shut these jobs down. Why don't you back off this?" That is what that is designed to do. You cannot give a person a right and then put peer pressure on him to make sure he does not exercise that right. That assumes, quite frankly, that health and safety representatives, who are trained by an agency of labour and management, are totally irresponsible and they will go around this province just unilaterally shutting down jobs because they feel like doing it. That is not what happens at the workplace. That is not the responsibility accepted by the labour movement in this province, and to try to put the peer pressure on makes absolutely no sense whatsoever.

We go on then further to talk about how the Occupational Health and Safety Act protects the worker from penalty and allows payment through the second stage of the refusal up to the final decision of the inspector. Bill 208 in its original form, once legislated, would in fact contain a built-in penalty clause and conflict with the current act. I talk about that being fundamentally wrong.

Now we get, on page 39, to the expanded individual right to refuse work. Bill 208 in its original form proposed a positive step for workers whereby a worker could exercise the right to refuse unsafe activity. Now the minister proposes to refuse on the basis of imminent danger. It does not get to the whole question of ergonomics, of continuing strain at the workplace which leads to injury and workers' compensation claims by the hundreds in this province. We have in fact in our union exercised the right to refuse, which in spite of employer opposition has been upheld by the Ontario Labour Relations Board. Now we propose to take a step backwards. Where are we going here in this province on health and safety?

On page 41 we refer specifically to one of those instances at Chrysler in the cushion room in Windsor. Again, I do not want to take time, because I know some of the members may want to ask questions about that, but we have in fact been into this debate on the question of imminent danger versus repetitive strain injuries. So we have dealt with that issue and we think this is a step backward.

Let me deal finally with one issue which I think concerns all of us, although not our members directly. That is the question of whether or not public sector workers should have the same rights as other workers in this province in the matter of health and safety. How can the government of the day, as an employer, say to its employees, "You don't have the same rights on basic health and safety as other workers in this province"?

How can you say to ambulance workers in their ambulances, who point out that they believe certain aircraft are not safe and they should not have to fly in them but they fly in them anyway because they do not have the right to refuse, and accidents happen—how can we say that those people are somehow different? I think the government quite frankly has an obligation in this legislation to accept its responsibility as an employer, the way we do in the CAW as an employer with our office workers, accept the same responsibility as the rest of the employers in this country. The public sector workers of this province are entitled to that as a matter of citizenship in this province and should not be second-class citizens.

Mr Chairman and members of the committee, obviously I went through the thing fairly rapidly because it is difficult for a union like ours, that has spent so much time on issues of health and safety both at the workplace and legislatively, to try and condense it into a half-hour presentation. We feel very seriously about this. We thought we had taken a step. We now feel, quite frankly, double-crossed. We do not think we should be here arguing about government amendments to a bill that we thought we were taking a step on.

1030

We understood the employer hysteria. We knew it would be there, however you wrote this bill. But I think now it is incumbent on this committee to listen to people in this province, again listen to the people who are getting injured, listen to the people who represent members who have been killed in this province, listen to the unions that are involved deeply in health and safety. I believe you will find we are almost of

one mind on this issue. We believe we know what is going on and we have an obligations to represent those viewpoints.

The Chair: Thank you for your presentation. We only have about five minutes left, but there is time for a couple of questions. Mr Miller and Mr Mackenzie.

Mr Miller: I think you made an excellent presentation this morning and I admire you for your ability on behalf of the labour community. I guess as a member of this committee and in the hearings we have gone through, what I am concerned about is management and labour working together and the cost that is going to create to general business across the province. We have heard from small businesses that are concerned that it is going to be an added cost. Health and safety to me is so very important.

This morning I read in the Globe and Mail that Honda in Marysville, Ohio has gained the biggest share and may be coming in as number three in the auto industry in America. You know how that system works. Management and labour work very closely together. To design a bill and legislation that is going to get that co-operation, I think, is very important to the province of Ontario and to me as a member of the Legislature.

I noticed you made a comment about the chairman being elected from the group and not neutral. I support that principle because I think it is so important that if you get management and the labour force working closely together, that is an important step. Would you care to comment on that and how we might put that into effect?

Mr White: Let me say, first of all, I do not know what the Marysville, Ohio Honda plant has to do with health and safety in Ontario, but there is no persuasive argument that they are doing that because they are working together. If you look at them hiring all young workers, not having the pension costs and a number of other obligations, that is a whole different argument.

In terms of working together, check the record of the auto workers' union in terms of bargaining in the auto industry. We have had one strike in General Motors since 1970. We settle the vast majority of our collective agreements without strikes.

If you want to give us a chance to work together, then keep the chairman out of the process. Put labour and management in the same room. These employer organizations have been getting a lot of funds from the Workers' Compensation Board and a lot of it has not gone to good health and safety training for workers.

Give us a chance to get around the table with senior management in this province and I tell you we will come to grips with the health and safety issue and we will work together.

We will have some differences because we have different viewpoints on these issues. We represent a different agenda at times, but we have an obligation to get around the room and thrash those out, as we do on a lot of collective bargaining issues that ultimately become legislation in this province, and there is no more important issue that we can work together on. That does not mean we will not have a lot of arguments about it, but if you look at what we have done step by step in the auto industry, we have been able to build that kind of confidence. We want to take it another step today, and there are a lot of people in Ontario depending on us to do that.

Mr Miller: You made a comment about it, and I used Honda for a specific purpose because I think it is in our market, within the American market, and it gives an example of how management and labour work together. I disagree with you. I think labour and management have to work together, and your indication that it should just be labour, I think that just confronts the whole—

Mr White: No. What I said clearly was I thought that we clearly represent the people who are getting killed and injured at the workplace. I said we are prepared to sit down with management as equal partners on this issue. It is management that is saying it does not want us to be equal partners. They want to have outside interference. They want to have the unorganized workers, whom they never speak for on any other issue, whom they oppose minimum wage increases for in many cases—they want them to be their partners. We want it to be organized labour and organized management to help determine this agenda here.

Mr Mackenzie: I guess in a generic way as well, I am glad of the examples in your brief, because we have had examples of workers paying the supreme price in every single city we have had hearings.

On page 28 of your brief, and it is partially a response to what my colleague Mr Miller was saying as well, you talk about promoting partnership. Is it not more likely that we can achieve the goal that many people want of, not eliminating confrontation, but more co-operation, less confrontation, through a little more trust and responsibility given to the workers? In other words, co-operation is not

going to be gained by a betrayal of workers such as we have seen in the amendments to this bill, but it is going to be gained by giving them the responsibility to work out the problems we have in the workplace.

Mr White: I think that is absolutely correct and I think the record shows that. If you look at the auto industry, we used to have a lot of health and safety issues that we were dealing with in collective bargaining. We then set in process a place where there were full-time health and safety representatives from management, full-time health and safety representatives from the union. They were working on health and safety matters. They joined together in joint health and safety training. We started to build the confidence level.

Again, we will still have some confrontation on some of those issues, but you are having a confrontation about real issues, not about the lack of confidence in each other. If we could take that example provincially across the board, and that kind of respect and understanding, then we could do something for a lot of people in this province who do not have that confidence level, who have employers who do not care about health and safety, who are not organized in this province.

The way you do it is you get in a room, you exchange ideas and you build it. The facts are that labour and management must determine the agenda here. We cannot have employers who ask for amendments to Bill 208 and then when you give them the amendments they want, they say it does not go far enough. The fact is that there are some employers—not all employers, but there are some employers—in this province who do not want any health and safety legislation, who do not want any plant closing or severance pay legislation. So I think it does. We have shown it does build a confidence level, but it is also a matter of continuing to work at it, because the issues are changing at the workplace almost every day. The knowledge of chemical hazards, etc., is much more widespread than it was 10 years ago. It does build a level of confidence, but it takes time to do that.

The Chair: Mr Mackenzie, in fairness, I think the other caucus represented here, Mrs Marland from Mississauga South, has a question.

Mrs Marland: On pages 5 and 6 of your brief you are talking about how mutual respect has been developed and programs have resulted. You go on to speak very highly of the collective bargaining process and how it has really worked. I am wondering, if it works so well that way,

once you get everything into legislation, what is going to happen to your collective bargaining process? Are you saying that you feel you need the legislation because the collective bargaining process does not affect the 70 per cent who are unorganized workers?

Mr White: No. I think there are two points to it. Legislation always presents a minimum. The legislative right to refuse in 1979 set a whole new agenda for health and safety, and collective bargaining encouraged unions and employers to sit around the bargaining table and build on that. We have done that for 10 years, and the major employers, I think, have done a good job together on that, but we still have a long way to do go. We think now this change that is presented in the original Bill 208 takes another legislative step.

Yes, it will help us in terms of building on what we have done with our major employers, but it will also help a lot of people in this province who still do not have the proper representation on health and safety, and it will bring together employers and labour at the senior level in the province to talk more generally about health and safety training, about training of health and safety representatives at all workplaces, including unorganized workplaces.

In other words, take protection from just the collective bargaining agenda where some unions are strong at a major auto industry or a major steel or mining industry to a lot of smaller plants where the unions may not be as strong, or smaller employers, to ultimately unorganized workers as well, and broaden the general understanding of health and safety at all workplaces in this province. That is really what we are trying to do, and the legislative agenda sets the minimum standards for that. Where we are strong, we will still build on that in collective bargaining situations. So it does not take away; it enhances it, quite frankly.

The Chair: Mr Chernecki, Mr Nickerson and Mr White, we thank you very much. I wish we had more time, but we do not.

Mr White: I do too. This is our town and we would like to stay.

1040

The Chair: Right. Thank you very much.

The agenda has been changed for the second presentation. The Motor Vehicle Manufacturers' Association and Chrysler have switched times with one another, and for the agenda now at 10:30 we have the MVMA appearing before us. Could they come to the table, please? Gentle-

men, we welcome you to the committee this morning and we look forward to your brief. If you will introduce yourselves, we can proceed, for the next 30 minutes, whenever you are ready.

MOTOR VEHICLE MANUFACTURERS' ASSOCIATION

Mr Nantais: Good morning. The Motor Vehicle Manufacturers' Association is pleased to be among those appearing before you to comment upon Bill 208 as it moves through the consultative process. We appreciate the magnitude of the task that is before this committee and we are truly grateful for the opportunity to appear here today in light of the large number of requests you have received from a great number of employer and worker representative organizations.

My name is Mark Nantais and I am executive director with the Motor Vehicles Manufacturers' Association. With me, providing the benefit of their knowledge and expertise in the area of occupational health and safety, are representatives from some of our member companies. To my immediate left is Bruce Waechter of the Ford Motor Company of Canada Ltd. On my immediate right is Ron Boissoin, who is with General Motors of Canada Ltd, and he is also the chairman of the MVMA health and safety committee. On my far left is Gerry Gonerman, also a representative of another one of our member companies. He is with Mack Canada Inc.

Before proceeding with our presentation, let me say that our remarks are being made in the following context: MVMA member companies are committed to improving health and safety in the workplace and we share the government's objective of improving safety through effective training and education, with emphasis on co-operation in the workplace. No number of worker injuries or deaths is acceptable. Our member companies have allocated large amounts of resources aimed at elevating workers' health and safety knowledge and training so as to minimize the number of accidents in the workplace. The programs designed to meet this objective have evolved with participation of the unions, as Mr White has clearly pointed out today. It is clearly a partnership in many respects.

Collectively, our member companies, as listed on the face page of the document before you, constitute a large and important sector of the Canadian economy. In fact, direct employment is set at about 140,000 jobs. Both direct and

indirect employment is at about 150,000 jobs, of which 80 per cent of production facilities reside in Ontario.

Automotive industries across the world are looked to by national governments and citizens for positive contributions to employment, standards of living, investment, technology development, productivity and the highest standards for employee training and the occupational environment. These standards have been developed over many years of continuous employee-employer negotiation and co-operation. Resultant actions and programs to meet these standards are set out in collective agreements representing significant amounts of experience and history.

In certain respects, Bill 208 acknowledges and attempts to build upon this history of effective action. In important other provisions, it conflicts.

The MVMA supports in principle provisions respecting the establishment of the workplace agency, worker training and education and the promotion of co-operation and shared responsibility between employees and management. These have the potential, if developed properly, to improve the safety of the workplace environment. None the less, we remain concerned about the impact of key provisions of the bill on member company operations.

We would urge that arbitrary measures in the bill, intended to redress the most serious shortfalls found in workplaces in Ontario, be fashioned so as not to interfere with effective, long-standing, detailed collective agreement provisions negotiated to address specific industry issues, with responsibilities shared by contracting parties in the automotive industry. In many instances, MVMA member companies have negotiated and developed procedures and programs and benefits which exceed requirements under the Occupational Health and Safety Act. Some examples have already been cited today, such as lockout training, full-time health and safety committees, which have been required long before the law required them to be there, national co-ordinators in health and safety and master health and safety committees.

In other words, the legislation should build upon, not detract from, the principle of internal responsibility, a concept which the automobile industry has supported and engaged in for a number of years.

There are several elements of Bill 208 which the MVMA members consider to be counterproductive to the principles noted above and the requirements of integrated, synchronized manu-

facturing facilities which characterize motor vehicle assembly plants in this province.

1. The right to refuse: We are concerned that section 23 of the current act, the worker right to refuse, is all too often misused.

[Interruption]

The Chair: Order, please. Excuse me, Mr Nantais. Surely you people understand that we have invited these people. We want to hear their views. They are not doing their lobbying behind closed doors. They are in front of a legislative committee where we want them to be, and surely you must want them to have that right as well and to have a frank exchange with the members of the committee without any harassment from the audience. I think, out of a sense of fairness, you must agree with that.

[Interruption]

The Chair: That is not for you to judge. They are here making presentations before the committee and we insist that they be allowed to do so without harassment. We would not allow you to be harassed if you were making a presentation. Mr Nantais, go ahead, please.

Mr Nantais: We are of the view that costly and unnecessary work refusals could be avoided if a preamble inserted in front of section 23 established that a worker may refuse to work under section 23 only after exercising his or her duties as outlined in section 17, that is, the responsibility of a worker to consult with his or her supervisor.

[Interruption]

The Chair: We do want these meetings to be held in public, and we do want to allow members of the audience to stay in the room, but I am telling you that, as a legislative committee, we cannot tolerate witnesses being harassed. You had better understand that.

Mr Nantais: Of course, in any case where a worker feels he or she is facing imminent danger, we want that worker to immediately exercise the right to refuse. This is the position which our member companies have always taken, a position which any responsible employer takes.

Provisions respecting the right to refuse work are still not balanced so as to eliminate or at least substantially reduce misuse of that right. Lost production from that misused right is significant and has been growing even under present legislation.

Our member companies have been hard pressed to explain downtime or lost production through the misuse of work refusals under the current legislation. The proposed amendments

do not address unique problems of the assembly line process, where a work stoppage can impact hundreds of operations and jobs not related to the alleged conditions underlying a work refusal. In the absence of balanced accountability and sanctions for inappropriately exercising the right to refuse, Bill 208 has the potential to increase rather than decrease misuse of that right, especially in instances where it can be used to achieve non-safety-related objectives.

When first introduced, the amendments included "work activity" as a reason for an employee to refuse work. We are pleased to see that one of the government-proposed changes calls for work activity to be more narrowly defined, making it clear that the right to refuse is restricted to current or, more appropriately, immediate danger and to deal with the longer-term ergonomic concerns through the joint health and safety committees, and in our industry, those which have already been established.

2. The authority to stop work: Bill 208 initially provided that two members of the joint health and safety committee be certified by receiving specific training and that they have the right to unilaterally stop work in cases of immediate danger. In response to great opposition from stakeholders, the Minister of Labour has offered a new approach making the right to stop work a joint committee decision for companies with good safety performance. The right to stop work would be unilateral for companies with poor safety performance, with the possible assignment of a full-time ministry inspector, at the expense of the employer, to bring about the necessary improvements.

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The MVMA believes that in the absence of data to the contrary, the present individual worker's right to refuse work perceived to be unsafe provides adequate protection. All employees are trained and are knowledgeable of their rights and responsibilities under the Occupational Health and Safety Act. There has been no demonstrated need in the automotive industry to certify employer and employee representatives and provide the unilateral right to stop what is perceived to be an unsafe operation or activity.

On the shop floor, the reality is that health and safety representatives operate in a political environment and are subject to the political agenda of the unions. Granting the unilateral right to a certified committee member to shut down an operation will not assure improvement to safety in the workplace, it will further dilute the internal responsibility system and detract

from the objective of co-operation in the workplace.

Increasing co-operation in the workplace, not the creation of unilateral, arbitrary powers, is by far the better objective. Together with effective training and education, much more positive results have been and will continue to be achieved.

3. The health and safety agency: The MVMA welcomes the recommended changes in agency composition which provide for a neutral chair, although we suggest that that neutral chair be a nonvoting chair. We also agree with the addition of four health and safety professionals.

However, the health and safety agency composition must be truly representative of its constituency. Indeed, if there is to be an agency, worker and employer representatives on the board of the agency must democratically represent Ontario's broad-based workforce.

Agency powers and mandate should support the internal responsibility principles. A democratic, consensus-building mandate should be its initial purpose, to ensure that it is accepted as complementary to present programs. The agency should perform an advisory role to the Minister of Labour and not be given power to impose new standards or legal requirements without legislative due process. Legislative powers beyond that purpose should be defined to meet particular needs and not be sweeping in scope.

4. Health and safety committees: Where company health and safety committees are already comprised of full-time employer and employee representatives, having been established under collective bargaining and meeting present legislative requirements, we believe an increase in size is unwarranted. Through the collective bargaining process, full-time, company-paid employee representatives have duties, responsibilities and privileges exceeding that which is provided for under the present Occupational Health and Safety Act.

Additionally, we do not believe that office locations can be effectively serviced by plant-oriented health and safety committees. If proved necessary, office health and safety committees could well be structured as a part-time employee function, with a single committee responsible for a number of office locations within a company. It must be recognized that significantly different safety issues exist between office and manufacturing facilities.

5. Medical surveillance programs: Shared, internal responsibility should continue to be the

operative principle in defining the need for and the delivery of medical surveillance programs.

Participation of workers in medical surveillance programs "as prescribed" is a concern. Workers should be required to participate in the employer-established medical surveillance programs, which are designed for early detection and prevention of an occupational illness. Employees opting out of the employer-established programs should do so at their own expense, with results made known to the employer for early detection and to effect preventive measures in the workplace.

This completes our verbal presentation. We would be pleased to answer any questions that you or your colleagues may wish to pose.

Mr Fleet: First, I just want to confirm. You indicated that you supported the establishment of a neutral chair on the agency but you said it should be nonvoting, is that correct?

Mr Nantais: That is correct.

Mr Fleet: The other area I wanted to touch on dealt with the right to refuse. You have made a blanket assertion that the right to refuse has been often misused, but you did not cite any examples. You have also indicated that your member companies are unable to explain downtime or lost production through misuse of work refusals.

I am not quite sure what that means. I am not sure if that is saying that you do not know how much time is lost or you do not know how many work refusals there have been or what exactly that means.

I was really rather surprised at those comments, because the evidence we have had before us has been that although there have been some instances of workers' refusals being, in the view of employers, not appropriate, on the whole those have not been very numerous. I am wondering if you could provide us with some hard data about how many refusals there have been, first of all, within your group of companies, and second, what the ramifications have been.

Mr Nantais: From the standpoint of the MVMA, I think we have to realize that we are somewhat at arm's length and that knowledge of specific incidents is something which I am not able to respond to.

Mr Fleet: There are people from companies with you. Can somebody speak to the issue?

Mr Nantais: As I was about to say, if I may defer to those, I would like to do so.

Mr Waechter: First, Ford will be making a separate presentation to this committee and we

will get into specifics dealing with how the act relates to Ford Motor Co or its proposals.

But let me say that in most of our plants, the system is working well. However, in some of our assembly plants, too often worker concerns are not being raised and resolved as worker concerns under section 17 but end up being work refusals under section 23. We end up in work refusal situations to the tune of—you asked for numbers. In the last four years, 1986 through 1989, we have had something in the neighbourhood of 1,300 work refusals under section 23, to the tune of approximately 18,000 automobiles.

Mr Fleet: In how many instances, out of that number of refusals, has there been an acceptance by the company of the cause of the objection and in how many instances has it gone to the Ministry of Labour? That likely-to-endanger determination—the fact that there are a lot of refusals might indicate that there were a lot of dangerous situations. That is presumably why the workers objected.

Unless we get a better sense of what the resolutions were, it is only partially helpful.

Mr Waechter: I think, realistically, we could bring up situations where, in our view, it was a total misuse. On the other side of the agenda, no doubt the union could bring up situations where it says and where there was immediate risk. We are not arguing those situations.

Mr Fleet: That is what this debate is all about.

Mr Waechter: That is right. What we have here, though, is a situation where we are looking at jumping right in and using section 23, as I said, without going through a normal process to handle the employee's individual concern or issue that has been raised.

Mr Fleet: Unless I have more specifics, it is difficult for me to understand. If a worker is on the line and there is a dangerous situation that confronts him or her, the worker may well decide that he cannot afford to do anything else but stop the function right away because of the nature of the danger. I understand your contention. You are saying that in some instances they do not have to do that, that there is some other way to do it. But unless we have some better sense of the way these things are being resolved, I frankly do not understand how the committee is going to be able to draw a particularly well-founded conclusion based on the flat assertion that there are a lot of inappropriate refusals. I think we would need a much stronger sense of the hard data about what the Ministry of Labour decided in those instances

where the ministry was involved and that kind of thing.

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Mr Waechter: On the numbers of work refusals, it is probably about 10 per cent where the Ministry of Labour is called in. The other 90 per cent are resolved between the supervisor, the employee and the worker rep. They resolve that issue. In the 10 per cent where the Ministry of Labour is called in, probably half of those result in some form of order. The other half is where it is ruled that there is no likelihood and that there should not have been a work refusal.

Mr Fleet: I realize there are other members with questions.

Mr Mackenzie: I want to stay for a moment with the same general area. Your brief surprises me a little where you say you are concerned that section 23 of the act, the worker's right to refuse, is all too often misused. The overwhelming evidence, I think—I am talking about from the business community, and certainly when we listened to Mr Mayberry of Dofasco and the Stelco president, some of the mine people and some of the business groups—was that they either could not give us examples or they admitted, front and centre, that they did not have a history of misuse of the right to refuse.

I think it highlights some of the anger of workers who in effect have paid the price. Of the 285 deaths and 500,000 injuries, very few, if any, have been management or owner people, so workers are the ones who are on the work floor paying the price.

When you say in the third paragraph from there that "Bill 208 has the potential to increase rather than decrease misuse of the right, especially in instances where it can be used to achieve nonsafety-related objectives," you have set up a couple of barriers right off the bat: the workers and not the companies are responsible for the problem. I am not sure how we lead to a co-operative approach between labour and management with these kinds of assertions in your presentation.

Mr Boissin: If I may address that, you asked for some hard data. General Motors will be making a presentation next week to the committee, at which time we will endeavour to come back with some of the information you are looking for, but I can provide some information to you now if that will help.

As an example, last year at General Motors of Canada we had 345 work refusals in total. The Ministry of Labour was called in on 41 of those

345, which means that 304 were resolved in-plant by the health and safety committees or actions between the supervisors and the employees. Of the 41 where the Ministry of Labour came in, it found that there was some mitigating factor in approximately 15 of the 41. In the remainder they found no just cause for the work refusal in the first place.

The impact of all those refusals, though, on General Motors was that we lost in the neighbourhood of 178,000 man-hours last year. We lost 400 trucks, 2,800 cars and 500 vans, and also components.

For some of those, yes, there was good justification behind them and at General Motors we certainly feel that employees should refuse to work if there is immediate danger to them. We do have examples, though. There is one I can quote which cost us production at our truck plant, and this is I think what you are looking for.

Employees one day perceived that there was a strong smell in the truck plant. After a work refusal that cost us nearly two hours' downtime in lost production and several million dollars, the smell turned out to be an odour from pumpkins that were being processed by Stokely Van Camp of Canada in north Whitby, went through the sewage system and fouled the sewage plant in Whitby some four miles away. It shut down a production line, though, because we had an immediate refusal rather than—

Mr Wildman: Was this around midnight?

Mr Boissin: No, it was during the day. Rather than investigating it under section 17, which we are concerned about, it resulted in a work refusal and an action which we feel was unjustified. That was where it cost us a lot of cars. It is difficult to explain, in the context of talking to our senior management, why we lose those jobs here in Ontario. We will try to provide more of that data to you if you would like it.

Mr Mackenzie: One of the difficulties is that I do not know how the worker is supposed to know in a situation like that and the counter stories are legion as well. We had over 600 orders that were not acted on at McDonnell Douglas, so yes, eventually there was a walkout of 3,000 workers, but it was repeated ministry orders that were not complied with.

We had a Libbey-Owens-Ford situation in Lindsay where a heck of a lot of workers who are now sensitized to isocyanates ended up being fired because they had exercised their right on the company. I think that if we want to get into this kind of an exchange we can, but what we are really trying to do with this bill is to find ways

and means where we can accept one another and give one another enough responsibility that there is a chance to make the co-operative approach work. I do not think it starts out right off the bat with the kinds of assertions that are in your brief.

Mr Nantais: If I may comment, as Mr White alluded this morning, I think that in the automotive industry a mutual respect has developed and there has been some success in mutually addressing these concerns. It is a commitment that all our member companies are pursuing and we do intend to do what we possibly can to improve health and safety in the workplace. As I pointed out in the beginning, no number of accidents or deaths is acceptable. We agree with that objective.

Mrs Marland: Mr Nantais, if in the automobile industry, from what you have just said, two hours amount to X number of—how many millions of dollars did you say?

Mr Boissain: Two hours in our truck plant would mean that we would lose approximately 130 vehicles. We would have 1,700 employees who were not working for that period of two hours and probably it would result in, and this is only an estimate, \$2 million or \$3 million in losses.

Mrs Marland: When you answer that way, I think the inference you give is not really the position of the automobile industry. I do not think the position of your industry is that you are concerned about the millions of dollars versus the safety and survival of your workers. I respect the fact that is not what you are trying to portray. It is a difficult question for you to answer but—

[Interruption]

The Chair: Go ahead, Mrs Marland. We want to have frank exchanges between members of the committee and people who appear before the committee, so let us let that happen.

Mrs Marland: Perhaps when you come before the committee with your individual presentations you could give us the figures about major injuries and fatalities, because I think that completes the full picture.

This committee travelled the province looking at mining accidents, and at that time we learned that the internal responsibility system was very important in the mining industry. You have said in your brief this morning that it is a concept that your industry has successfully engaged in for a number of years. Could you elaborate on that. Have you found that with the IRS you have reduced accidents in automobile manufacturing in Ontario?

Mr Boissain: If I can speak from the standpoint of General Motors, yes, three years in a row now the accident frequency has been reduced in the area of eight to nine per cent per year. In terms of attributing it to—

Mrs Marland: So then since you started it you have had a 30 per cent reduction.

Mr Boissain: In actual fact we have had joint committees and internal responsibility since almost 1973, but I quote specific figures for the last three years. Yes, it has been reduced in the area of eight to nine per cent per year.

The Chair: Excuse me, Mrs Marland. Is that true for the industry?

Mr Boissain: I am speaking for General Motors.

Mr Waechter: I can say for Ford that for the 1989 year to date over 1988, our new lost-time injuries are down 23 per cent, but how much of that is due to IRS and other factors one has to try to equate into it—we are talking about IRS and the joint programs at the University of Windsor here, whereby we are training 24 Canadian Auto Workers material-handling operators and material-handling supervisors to jointly deliver a training program to the possibly 14,000 hourly and salaried workers in the plants on powered material-handling equipment.

There is a one-hour session that will be put on for all hourly people who operate in one of our plants on pedestrian safety, and there are another additional four to five hours that will be devoted specifically for powered material-handling training and this is, as I say, a joint program between Ford and CAW.

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The Chair: Thank you, Mrs Marland. Mr Nantais, I thank you and your colleagues for your presentation to this committee.

Mr Wildman: A question for our researcher: in order to be able to analyse this information in terms of lost man-hours related to work refusals, would it be possible for us to find out also the total number of man-hours lost due to lost-time accidents and medical aid accidents?

The Chair: Mr Nantais, I wonder, before you leave, there has been a request for some more information. Any kind of information or statistics you can send us would be helpful on the lost time.

Mr Nantais: Could you reiterate the specifics again, please.

Mr Wildman: In one of the responses, the number of lost man-hours and lost production

was given to the committee. In order to be able to analyse that adequately, I think we also need to know what the total number of lost-time accidents was, how many man-hours were lost as a result of that and also the number of medical aid accidents.

The Chair: Mr Nantais, since General Motors and Ford are making a presentation next week, or the week after in one case, if you gave them the information, they could bring it to us.

Mr Nantais: Yes, we will attempt to compile something that represents input from all the major manufacturers.

The Chair: Thank you very much. The next presentation is from the Windsor and District Labour Council, and please do not harass these gentlemen.

Mr Parent, we welcome you to the committee this morning. We recognize you from previous presentations and for the next 30 minutes we are in your hands.

WINDSOR AND DISTRICT LABOUR COUNCIL

Mr Parent: I first would like to preface my remarks. I think I would be remiss if I did not respond to some of the allegations in the previous presentation, particularly when they speak about frivolous work refusals. I noticed that the management employee mentioned 1,300 work refusals at Ford. He did not respond, though, when questioned how many of those were because of the supervisor not addressing the concerns of the workers that were presented to him or her.

The other thing is that if you ask some of these health and safety representatives here this morning for these hearings how they feel when they have to go to the accident location and pick up parts of fingers of people, of workers, who were not protected under the Industrial Standards Act of this province, they hope that you are going to make recommendations to provide safer workplaces here in Ontario. I say to this committee that they have not done a good job here in this province.

I will now address the brief. First, on behalf of the over 40,000 members whom the labour council of Windsor represents, I want to thank the standing committee for the opportunity to make a presentation on this very important bill to amend the Occupational Health and Safety Act here in the province of Ontario.

With one worker on the average dying every working day in Ontario, that certainly provides

this committee with the needed statistics for reform on occupational health and safety.

Up until 30 November 1989, the Workers' Compensation Board statistics show 43,499 workplace injury claims in Ontario, which relate to 1,820 injuries every working day or 227 every working hour in 1989. In Windsor you only have to see the backlogs of WCB cases to know that the workplace injuries are on the rise. In March 1986 statistics we were shown at that time show an increase of 6.5 per cent, and I am sure, talking to my colleagues in other plants and offices around the city and area, that they are certainly on the rise.

With these statistics on injuries, surely they indicate that something is wrong with the current health and safety act and the safety system in this province. How can the workers in this community feel safe at work when the government has almost twice as many full- and part-time conservation officers protecting fish and wildlife as occupational health and safety inspectors protecting workers in this province?

In Windsor and area, we have eight inspectors, and I might add six full-time, two part-time, looking after over 3,000 registered employers, which is absolutely ridiculous, and yet the current government wants the workers to feel it is concerned about workplace safety. We have our doubts. I might also add that they are also led to believe these health and safety inspectors take in Kent county as well. If you look at the amount of time that would take to just go and do the workplace tours of the health and safety inspector when you have over 3,000 employers in this community, you tell me how well they can do their job in inspecting the workplaces, let alone addressing work refusals or other things that are tied to their duties as health and safety inspectors.

The reliance on the internal responsibility system is not working and the latest stats prove that it is not working. I will have Nick Laposta proceed.

Mr Laposta: It was found by the minister's own advisory council, the eighth annual report, volume 2, that 78 per cent of the workplaces were violating one or more sections of the act. Seven per cent of employers with more than 20 workers had not established a joint committee, which is the mechanism for the internal responsibility system required by law. Along with this, 35 per cent of the worker members selected on joint committees had been selected solely by the employer, which is another violation of the act. Forty per cent of the worker members and 20 per

cent of the management members were found to have no training in health and safety.

We believe that you as committee members have to agree that these previously mentioned stats reflect an internal responsibility system that is not working. When one includes the above and recommended amendments by the current Minister of Labour (Mr Phillips), there can be only one conclusion: that the current government is satisfied to gut the original Bill 208 at the committee stage, thus limiting even further the protection for workers which has been sought after by us in the labour movement.

Our public sector workers here in the Windsor area need to be protected with the individual right to refuse and right to stop work, which is limited or exempted under the bill, to prevent accidents such as the one that took the life of the air ambulance attendant here in the Windsor area.

Our area is highly agricultural in nature, yet farm workers are excluded from coverage under the present act and Bill 208. This group of workers has to be included so that the accident to the woman mushroom plant worker who was killed near here, and her accident was not even investigated to possibly save someone else's life, has to be the last time that this will happen.

It is our opinion, and that of others in the labour movement, that to make Bill 208 an effective bill to protect workers it is important that inspection of the entire workplace take place once a month. Joint health and safety committees should be in place in every workplace, including office and retail establishments with 20 or more people, and on construction projects expected to last three months, and at least a worker health and safety representative in workplaces of between five to 20 workers.

Also make it mandatory that the joint committee members be paid one hour preparation time to attend each meeting, and that workers affected by a right to refuse or a stop-work order by a certified member or a ministry inspector be paid, thus eliminating the double jeopardy of being at risk and also suffering a wage loss when they attempt to correct an unsafe situation.

We have to make sure that the employer is made to respond to committee recommendations within seven days, not like we in the Windsor area have experienced with such corporate citizens as Valenite-Modco and Bendix. Also, we must ensure that no worker is assigned a refused job until this issue has been resolved.

We must expand the right to refuse unsafe work to include "activity," which covers repetitive strain situations and poor design, and ensure

more training for all workers about health and safety so that they are much more aware of the dangers in their particular workplace.

These recommendations and the many more which you have heard across this province have to be implemented so that proper health and safety is put into Ontario's workplaces.

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Mr Parent: I believe Chrysler will be following me today, and I am sure they are coming here not to gut or to speak against Bill 208 but maybe to enhance Bill 208 on some of the recommendations we have made and will be making across this province on behalf of the labour movement, because their accident statistics alone will show that this competitive world we are now in has been at the expense and the cost of the workers who work for Chrysler Canada, and I am sure that is evident in other workplaces across this province. The word "competitive," we are saying to this committee, does not mean that it is going to be at the expense of the workers of this province. We need a clean, healthy and safe work environment.

We have waited more than 10 years for further reform in occupational health and safety in Ontario, and this committee and the government now have the opportunity to produce an act that would reduce the pain and suffering that far too many workers and their families have endured because of the system failing. It cannot be in the form of the watered down version that the current Minister of Labour is proposing. If this committee, and ultimately the government, does not incorporate labour's amendments, then what they are saying to the working people here and in the Windsor area is that you and they agree that one worker dying every working day and more than 1,800 injured every working day is acceptable here in Ontario while doing business here.

We say, my friends, that this price is much too high for workers in Windsor, Ontario and, we might add, for workers right across this province. We ask this committee to consider the tragic consequences of legislating an act which ultimately fails the workers of this province. We ask you to take the extra steps that will ensure safe and healthy workplaces for us here in Windsor and other workplaces across this province, and yes, we ask for your support in recommending labour's amendments to Bill 208. Respectfully submitted by the Windsor and District Labour Council.

Mr Wildman: I would like you to respond to a couple of things. First, you responded briefly to the presentation by the Motor Vehicle Manufac-

turers' Association which was made previous to yours. How do you react to their comment, on the third page of their brief, that they are not only concerned with Bill 208 but with the current act? Basically, they are saying that in the current act the right to refuse goes too far. How do you react to that; that the current legislation we have had since 1979 goes too far?

Mr Parent: I guess the response to that would be to the effect that the current act is not doing the job it was intended to do through Bill 70. The accidents in this province prove that the current act is not working. That is why we have proposed here within the labour movement the amendments that you have before you, and that is why we are so stringent and so concerned about the work environment that our workers have to work in day in and day out.

Mr Wildman: Also, could you respond to the suggestion that was made that there should be a preamble to the right to refuse which would say that the worker had to be in immediate danger before he or she could exercise the right to refuse without first going to a supervisor?

Mr Parent: I guess I would have to ask the employers, in whose view would they say that would be dangerous to. The worker obviously—and he or she has a right to refuse—is saying it is an immediate danger to him or her, or he would not be responding with the worker's right to refuse the unsafe act or job or whatever. The employers obviously are not responding to the current health and safety act in this province. How do we expect them to then come up with a resolution on who decides what is safe and what is not safe? I believe the worker who works on that particular job day in and day out knows what is safe and what is not safe in his or her work environment.

Mr Wildman: On page 6 of your brief, you deal with the question of work activity, which I think the Motor Vehicle Manufacturers' Association was responding to. Essentially, they are saying that you cannot have work activity that is ongoing—ergonomic problems, for instance—subject to the right to refuse because it might be used frivolously and that is why they have to have "immediate danger."

Do you think where somebody has to repetitively do something ongoing that might affect his or her arm—having to reach for something or being in an uncomfortable position which might affect his back—that is an immediate danger?

Mr Parent: We believe it absolutely is. One only has to ask the thousands of workers in this

province who are today crippled as a result of having to work repetitively because of bad ergonomics in the workplace. Just ask those workers. They will tell you.

Mr Fleet: I appreciated very much your presentation and in particular the several areas where you would like to see the bill go further. I think one of the things that is also important to note is that there is an awful lot established in this bill, regardless of the amendment issues that have been dealt with by you and others that have arisen out of comments made by the minister. Even with any of those amendments, this bill will still establish some 20,000 workplaces where they are going to have health and safety committees that they did not have before.

It is going to have a major impact on a number of sectors; the retail sector, for example. The concept of a certified worker is being established under this bill; the creation of the Workplace Health and Safety Agency to have a major function in terms of the whole area of health and safety, an umbrella organization. There is equal representation proposed in this bill for union and management representatives. There is a complete revamping of health and safety associations; again, equal labour representation being one of the requirements contained in the bill.

There is in fact, contrary to some impressions and beliefs, an add-on on the question of the right to refuse a work activity. None of the existing provisions in the bill is going to be cut back; it is a question of adding on, how much more you add on, how you word it to deal with the problems of repetitive strain injuries.

There is a personal liability being imposed under this bill that will be imposed on every corporate director and officer. They would be liable if found guilty of not doing their duty under the act. They would be liable to not only a fine but up to 12 months in jail. For inspection purposes, the number of inspectors from the Ministry of Labour has already been increased by this government by some 30 per cent since 1985.

I appreciate the thrust of your concerns and the fact that you want to do even more. I appreciate that. I would not expect anything else. That is right for you to make those arguments, but the fact of the matter is that this bill is going to leave the legislation in the province of Ontario as the most progressive legislation in all North America, with a lot of firsts and a lot of areas where we have ventured forth.

We have had criticism from the other side. I think it is important to bear that in mind. We are moving forward. We are not refusing to look at

anything else. We are looking at the things you have brought forward. I appreciate your presentation.

Obviously I have not put this in the form of a question. I am getting a signal that the chairman would like to give others a chance, but I thought it was important to try to cover some of the positive features in the bill that sometimes get overlooked.

1130

Mr Parent: With all due respect, if I may, in our brief we also pointed out the past bill that again was supposed to be law and we pointed out to you the violations that occur in the current legislation. So how can you sit there and guarantee that all these things are going to be positive when history tells you and tells me and tells the workers in this province that what has been done in the past is not going to happen in the future? The employers, quite frankly and quite fairly, are not responding to the health and safety act in this province now and we are saying we need stronger language in there that is going to make it better for the workers in this province.

Mr Fleet: That is why we are moving; that is why we are putting in changes, because we really have to make it better.

Mr Mackenzie: I have a question, not a ringing Liberal defence of an indefensible bill. You raise in your brief the death of a woman mushroom plant worker in this area. It brings me back to attempts to organize workers in the Pictou mushroom factory too, which was denied because they are not covered under the Labour Relations Act. In this death, you say there was no investigation. It is my information that the Farm Safety Association, which is funded by the WCB, did in fact investigate the death, but neither the family nor any of the people involved have been able to get a copy of the investigation. Can you tell me if that is accurate?

Mr Parent: That is absolutely accurate. In fact, I know there have been attempts by various members of different organizations to get something tangible from that organization, but obviously this would only lead one to believe that what they found in that investigation was neglect on the part of that employer. If they do not want to release the information to prevent something happening in the future, what else would that leave one to believe?

Mr Mackenzie: It is just another example of the total inadequacy of some of the current safety associations. Workers really have very little participation.

Mr Parent: Absolutely.

Mr Dietsch: I am curious to know your view, in particular on the stop-work provision, in respect to some of the presentations that have been put before us indicating that they felt stop-work provisions, once implemented, should be joint decisions of both the certified member and the certified worker to re-implement or restart up a job site. In relation to a question I posed—and this was to a union, by the way—they also thought that if there were a joint startup provision, maybe a joint shutdown provision was fair as well. I would like your comment and response to that.

Mr Parent: I guess, with all due respect, you would have to satisfy the worker who originally took an individual right to refuse to do an unsafe act, to work on unsafe machinery or whatever. The joint presentation by management and union members would have to satisfy that individual worker that the condition has been resolved and that it is now safe for that worker to continue on with his or her job.

Mr Dietsch: The question really is in relation to what I hear you and other unions saying. What I hear management saying, in one vein, is with respect to a stronger work partnership in the workplace—

Mr Parent: Absolutely.

Mr Dietsch: —that workers should play a greater part in the workplace and there should be a co-operation going on. We also know that does not exist at all times. However, the point is, if it is going to be a joint venture in terms of starting up a job, why then can it not be a joint venture in terms of shutting down a job? I want to know your position with respect to the joint aspect of it. You support, obviously, a stronger partnership and I am asking specifically with respect to having a joint startup, then why not a joint shutdown?

Mr Parent: With all due respect, one has to look at the individual case in point, one has to look at the work. I have no problem with the joint coming together of management and union representatives and probably in 99.9 per cent of the cases that will be the resolution of it, once they go to that worker. But what we are also saying in our recommendations is that you cannot take the individual right away from an individual worker as well.

Mr Dietsch: This bill does not touch the individual right. The individual right is still intact in the act. What we are doing—

Mr Parent: And we want to protect that.

Mr Dietsch: Maybe when Mr Fleet made his presentation, there were too many good things and he did not get them all.

Mr Parent: They went right over my head. I am sorry.

Mr Dietsch: I would suggest you sit on a pillow.

[Interruption]

Mr Dietsch: Obviously, they do not like my sense of humour. None the less, with all due respect, I think what I am talking about is in terms that the individual's right to refuse is still intact within the act. What there is, in addition to that, is a certified worker's opportunity to look at the job relationship as to whether it is a hazardous job in relationship to the certified—we have to remember that these certified people are trained—have that opportunity to shut down a workplace. That is in addition to what is there.

I know that you are aware that ergonomics are being studied by the joint health and safety committees in the workplace. I think there have been presentations before this committee that have outlined the agreement with that stronger partnership and workplace partners knowing best what is suited to them. I am more particularly interested in that aspect of that joint partnership, these certified people working together on those job shutdowns, not to be confused with what is in the act currently.

Mr Parent: Mr Dietsch, again with all due respect, I think that what you have said—and you have hit on a very good point; that is, being trained. Because, under the current legislation, how many people were not training yet they were holding the position of joint health and safety committee members.

The other thing is that, of course, as we again point out in our brief, we have to make sure that those selected as union members are selected by the people in that workplace and not by the employer who has an ultimate agenda of his own, not necessarily the health and safety of the workers who work for him.

Mr Dietsch: In the new bill, of course, they do. The workers select their own representative. That is right. Thank you.

The Chair: Mr Parent and Mr Laposta, thank you very much for your presentation this morning.

Mr Parent: I have a copy of comments from an injured worker who would like to leave with the committee his views of what Bill 208 means to him and his family. He has had to terminate his

employment much earlier than he chose to do, but he would like this to be presented to the committee and he asked me to do that.

The Chair: The next presentation is from the Windsor Construction Association and the Heavy Construction Association of Windsor. Is Mr Moncur here?

Mr McIntosh: No, sir. Unfortunately, Mr Moncur could not be here. My name is McIntosh.

The Chair: Mr McIntosh, we welcome you to the committee this morning. For the next 30 minutes, we are in your hands. You can use as much of it as you want for your presentation or leave some time for an exchange with committee members.

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WINDSOR CONSTRUCTION ASSOCIATIONS AND OTHERS

Mr McIntosh: Our presentation is made to you today for the following associations: the Windsor Construction Association, which has a membership of 220 members; the Heavy Construction Association of Windsor, which has 100 members; the Windsor Home Builders' Association, which has 100 members; the Mechanical Contractors Association of Windsor, which has 40 members; the Windsor Sheet Metal Contractors Association, which has 15 members, and the Windsor Electrical Contractors Association, which has 20 members.

All of the above associations directly or indirectly belong to the Council of Ontario Construction Associations and jointly represent approximately 500 employers in this area.

On behalf of these associations, let me state very clearly that we are not opposed to Bill 208 but rather wish changes to four sections of the bill that are, in our opinion, unworkable and ill-conceived and that will in the long run prove counterproductive to improving health and safety on the construction work site.

The four principal concerns of our associations are the new safety agency, stop-work provisions, worker certification, and trades and joint committees.

The basis of our concerns are (a) that this will create an unnecessary new agency and a layer of bureaucracy that duplicates other safety initiatives and that will have an enormous potential to reduce safety; (b) we suggest the stop-work provision will possibly reduce rather than increase work site safety; (c) this has the possibility of concentrating most of the training on the few, resulting in less training for the majority, and (d)

we suggest it will increase the negative and weakening effect that these committees have brought to the employer-employee partnership. Data available from the Construction Safety Association of Ontario study *Two Work-Site Comparisons* show that a trade committee's influence results in a negative effect on safety. The study also lists successful joint committee work sites.

We propose substantial amendments to allow CSAO to retain the independence that has produced outstanding safety results; have full accountability by all parties; distribute fairly the cost of increased training; allow all Ontario construction workers representation in the agency, not just union workers; create fewer confrontational job site management procedures, and continue to improve the participative approach to job site safety management.

The members of these associations are, with few exceptions, totally committed to the highest possible work site safety and workers' health and are willing to accelerate the process in which we have been leaders. We ask that this not be done in a autocratic or paternalistic fashion but rather by continuing the unique process developed and indeed flourishing in this singular industry. Only in this way can we maximize the safety of workers and the economic health of the province. Our solution includes a policy formation process as participative as the management process the ministry is seeking.

We attribute the enormous progress made in construction workplace health and safety to the fine performance of the CSAO and the equally successful results of the management-labour approach to health and safety, which has received the full support of all construction associations, resulting in significant improvement in key safety indicators. It has shown (1) a 47 per cent reduction in accident frequency, (2) a 58 per cent reduction in medical aid frequency and (3) a 64.5 per cent reduction in fatalities.

The construction industry in this area shares worker safety objectives with other workplace stakeholders. First, we have increased the amount of effectiveness of safety education for all employees in our industry. Second, we have enlisted the endeavours of labour, management and government through co-operative activity such as joint health and safety committees. Third, we have given strong support to a law that penalizes those with poor safety records and rewards those with good records.

The issue here is that creating a new agency is an unnecessary and counterproductive initiative

that will, among other things (a) raise costs to employers, investors and taxpayers; (b) add complexity to the construction management process; (c) reduce the effectiveness of safety institutions, and (d) damage the management-worker relationship.

Why this bill is being applied universally is a real mystery. Rather than building on our industry's progress and the positive relationship that has grown over the last 22 years, it blindly structures a new framework that reduces the construction workplace to another classic labour-management confrontation. We would strongly suggest that there is no need to disrupt and stifle a process that is working effectively and showing a significant improvement.

In the Ministry of Labour's own publication *Construction Safety in Ontario*, it states that "construction employers in Ontario have the best safety record in the world." The CSAO and the co-operative employee-employer approach to workplace safety have been the two main driving forces behind the improvement of our industry's safety record.

The successful years of building this institution and forging a culture of work site safety partnerships could be ended by an abrupt change in the controlling dynamics. If you force a partnership in CSAO, it can only lead to increased confrontation and a slower process in safety accountability among employers.

The cost of construction has risen dramatically. To create and force more overhead on employers and at the same time introduce productivity-reducing factors will only reduce long-term investments in the construction industry. It will cost our economy \$100 million for every one per cent decrease in production. The backlash factor of reduced investment will result in fewer projects, fewer jobs, less tax being paid and a downward-spiralling economy.

The members of the associations I represent are totally opposed to the stop-work power for the certified workers. Our concerns are simple: The stop-work provisions may reduce rather than enhance job site safety; the restoration of confrontation on the job site and the creation of a possible manipulation opportunity, and the danger of reduced accountability by management and the added danger of the individual worker to recognize and act on safety problems.

We propose the following specific amendments, which in our opinion will fully achieve all the minister's safety goals on the job site. We agree with the minister's position that decisions jointly made between employer and employees

are best. Bad work practices should be stopped until rectified. Contractors with poor safety records should be punished and lose the right to operate with the same freedom as those with good safety records. We believe that the stop-work right as proposed is unnecessary. It can lead, as we have said before, to a potential situation of manipulation by workers and does not necessarily improve worker safety. As you are aware, workers already have the right to refuse to work where the work is unsafe. The cessation of all work is, we submit, totally unnecessary. The current rights, if properly exercised, should effectively protect the worker.

We propose that you (a) delete the unilateral right to stop work; (b) create a hotline approach to an immediate conference between the employers' representatives and a labour ministry inspector; (c) apprise all workers of their right to refuse unsafe work assignments; (d) educate all employees to recognize dangerous work practices and situations, and (e) educate all employees and employers of what appropriate actions are required of them when dangerous work practices are observed or dangerous work situations arise.

We further propose that the ministry undertake (1) a concurrent study to find out if the above proposals are effective when employed; (2) a continuing analysis to determine if one method is more effective than another, and (3) that where a contractor is found to have a consistently bad safety record, a Ministry of Labour safety inspector be assigned to his job sites at the contractor's expense.

The minister has stated that "the act was founded on the central idea that it is the people in the workplace who are in the best position to identify and minimize health and safety risks." We could not agree more. However, we suggest that the government and management's representative will always have more information available to them on safety than most workers. To allow the least-informed member of the safety partnership to be able to act unilaterally has strategic weaknesses. It will tempt employers' representatives and other employees to abdicate their safety responsibility to the workers' representatives. It denies employees their individual right to judge safety issues on a personal basis. It detracts from the contractor's ability to fulfil his responsibilities. It has a potential to restore a confrontational mode. It can also reinforce the concept of elite employees.

We suggest that our proposals would achieve the shared industry-ministry goals without any

risk to the present positive safety trends in construction.

Bill 208 in its present form concentrates most training on a pool of selected employee representatives. We further believe it confuses the issue of safety accountability, further reduces the opportunity for general training and raises the risk of incompetence and manipulation. We also believe that the act in its present form infringes on the ministry inspectors' responsibilities. The appointment of specialists is contrary to our industry's safety goals. We would suggest that worker education, training and safety practices are the best tools to increase safe work habits on our job sites.

We would propose the establishment of minimum standards for universal employee training and delivery of integrated training programs in a multifaceted manner.

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We must be able to demonstrate the ability of our industry to self-regulate through the setting and achievement of progressive safety target indicators.

Bill 208 places the cost of all training squarely on employers training certified workers to staff projects requiring joint health and safety committees, while at this time CSAO has in place many of the components for a very effective training program. They are WHMIS required training; information on the occupational health and safety regulations for the construction industry; material handling and planning training; personal protection equipment training, and also accident investigation and reporting and many trade-specific programs.

As shown in appendix C, the construction industry fatality rate is showing a downward trend and it is our opinion that this is due to the co-operation that exists between labour and management and the training that has been done by CSAO.

The industry's concerns: The concept of the certified worker creates the establishment of an elite who then become a fourth stakeholder on every job site. It infers that the responsibility for safety rests with the elite and may reduce the individual's desire to be educated in safety matters.

It creates a quasi specialist who would be operating possibly with inadequate knowledge. Surely, this is the responsibility of the ministry inspectors, analysts and specialists. To transfer this responsibility to the certified worker could present several dangers such as overreaction to safety issues, overestimation of one's own

knowledge and removal of accountability from the specialists in management and the ministry. The certified worker idea has, at best, a limited workability in our industry.

We propose that all workers be trained to recognize health and safety risks and the appropriate corrective actions. We suggest that all workers be educated in their rights and over a reasonable period of time should be required to complete and regularly update courses on construction safety, WHMIS and the Occupational Health and Safety Act.

The responsibility to develop programs and make training materials available to our industry should be given to CSAO. We suggest such training would better inform workers of their individual right to refuse unsafe work and create a safer workplace.

The training suggested above should be delivered by a combination of apprenticeship, in-house and CSAO training.

The industry should set, track and achieve safety targets related to the progress of the implementation program on work site safety and can be achieved by recognition of incident priorities within the industry and concentrating on them, such things as overexertion, failure to concentrate early in the week, etc. We submit this could not be achieved by the appointment of a certified specialist.

The goal of our contractors in this area is to continue to strive and continue to be a world leader in worker safety training and excellent safety results. The method we suggest is education and workplace partnership.

Joint health and safety committees and trade committees: One of the construction industry's goals is to reduce accidents and protect workers' health, and to do this we have enlisted labour, management and government endeavours through co-operative activity such as joint health and safety committees where the goals are clear and shared by all parties. Joint committees have been very successful. Evidence of this is available which supports the positive results that can be achieved when the motivation of all parties is genuine and, most of all, objective. However, the presence of trade committees has, and evidence will also support this, inhibited the joint committees and reduced the safety results. Because of the above, we wish to make these specific proposals:

1. That the requirement for trade committees be removed from Bill 208, or that it shall not be applied to the construction industry.

2. In small construction companies the process for the election of the health and safety representative be replaced with allowing management to appoint these representatives.

Interjections.

The Chair: Order, please.

Mr McIntosh: 3. The construction industry should be allowed to determine the standards, site size, requirements and phase-in requirements for certification of management's representatives.

Finally, we would like to summarize what we find are the main problems created by Bill 208.

Cost: The proposed safety agency duplicates some of the functions of CSAO and provides the freedom to increase costs by 10 per cent per year. This total cost shall be borne by the construction employers. Also, the cost of worker certification training and the cost of the time spent on worker safety duties must also be borne by the same employer.

Representation: Bill 208 fails to recognize the fact that about 50 per cent or more of the employees in the construction industry are nonunion. Are we to conclude that the government is not interested in their input into their safety, or is this large segment of our industry to be exempt from this legislation?

Forcing 50 per cent representation in the management of the new agency and CSAO places both parties in a position of conflict. In an age when management and labour are shifting to a partnership styling, the bill acts to restore traditional postures instead of encouraging improvements in the partnership.

Accountability: Bill 208 is transferring its stop-work power to the workforce, which cannot be held accountable for damages caused by misuse or abuse of the power. Ministry inspectors are given the power to search and seize employers' records without the necessity of laying a charge.

The changes announced by the minister in October do not reduce the negative impact of Bill 208. Our remaining recommendations are based on the possible passage of the bill without consideration being given to our priority concern, which is the fundamental difference between our industry and others.

The management structure of CSAO must remain unchanged. The power of the certified worker to stop work on a project must be removed and replaced by a time-limited joint meeting where that type of decision is made between labour, management and ministry representatives.

The requirement to lay a charge must be a prerequisite before a ministry inspector can use his powers of search and seizure.

All workers, including non-union, must be fairly represented on the board of the new agency.

The majority of the positions on the small business advisory committee should be management representatives.

The agency board should be comprised of members who can show a working knowledge of health and safety policy issues and should not be political appointees from or aligned with business associations or labour organizations.

In conclusion, the construction industry in this area, through its steady progress and leadership in safety, has earned the right to special consideration under Bill 208.

We request the implementation of our recommendations 1 and 2 above and propose the formation of a joint labour-management-government committee to expand and refine workable systems for those amendment issues that we feel are critical.

I would also like to express my appreciation to the committee for hearing our submission.

The Chair: Thank you, Mr McIntosh. We have about 10 minutes left. Mr Mackenzie, Mr Dietsch, Mr Riddell and Mr Wildman.

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Mr Mackenzie: I have two or three short questions. First, you lay a lot of emphasis on the employer-employee partnership. Can you tell me, in the CSAO, which you also lay a lot of emphasis on, how many are management and how many are labour people on the board of the CSAO?

Mr McIntosh: There is not equal representation, the actual numbers, but there are labour representations on the board. There are 100 members of the board, but I am sorry, I cannot tell you how many are either.

Mr Mackenzie: Is it not a fact that there are less than 13 labour members on the 100-man board?

Mr McIntosh: Well, sir, you know something I did not know.

Mr Mackenzie: That really does not look like a partnership to me. Two years ago there were 39, last year there were 35 construction deaths and tens of thousands of injuries in the workplace. Can you tell me how many of them were the owners and managers of the associations that you represent?

Mr McIntosh: No, sir, I cannot.

Mr Mackenzie: Is it not a fact that probably we could not find more than one or two—

Mr McIntosh: I could tell you one industrial accident was the owner. It was Suburban Landscaping, where the owner was run over by a front-end loader.

Mr Mackenzie: But basically the 35 deaths and the tens of thousands of injuries are not the owners of these companies?

Mr McIntosh: Correct.

Mr Mackenzie: Correct. You also talk about this great partnership and co-operative approach. Why is it that every single construction trades union in the province of Ontario and the associations are opposing your position totally and supporting the bill and do not want the ministry's amendments to the bill and have made very strong presentations? What does that say about the kind of co-operative partnership you say that you have when all of the organized workers—I am not talking about the nonunion now—are totally in opposition to the brief that you just presented us?

Mr McIntosh: Why do I think they are opposing it? Obviously they do not agree with our opinion.

Mr Mackenzie: What does it say about the partnership when they are totally in disagreement with you, yet you stressed that we do not need the changes because of the great partnership you have?

Mr McIntosh: I do not know about the rest of the province, but the joint safety committees that operate in the Windsor area have been very successful.

Mr Mackenzie: Can you tell me if your comment on page 7, "failure to concentrate early in the week," is one of the things that is a bit of a problem? You are not really recommending that we do away with weekends so that workers—

Mr McIntosh: Well, it is nice to see some of the committee has humour, but what I am suggesting, which statistics will prove, is that there are more accidents at the beginning of the week than there are at the end. Perhaps the member of the committee could tell us why.

Mr Dietsch: Thank you very much, Mr McIntosh, for your brief this morning. Some of the improvements in the construction industry I think are as you have indicated on page 2 of your brief; however, your industry still remains a very high-risk industry and there is probably an average of 40 deaths in each of the last three or

four years. Between 1983 and 1988, the statistics of accidents, of lost-time injuries, have gone up by 5,000 from 12,000 to 17,000.

I am curious, recognizing that there have been some improvements, as you have outlined, and I know that the figures that you take on page 2 are over a longer period of time, but it still remains an incredibly high-risk industry. Do you not feel that some of the areas that are being addressed in the bill are promoting a stronger partnership, stronger joint co-operation, or are you satisfied with the numbers as they exist?

Mr McIntosh: The construction industry will never be satisfied until there are no accidents, but as long as there are human beings on a job, there will be accidents. But just to bring forth one of the points you made—

[Interruption]

The Chair: Order, please.

Mr McIntosh: From 1986 to 1989, fatalities in construction have dropped another 10 per cent. Lost-time injuries between 1988 and 1989 have dropped another 10 per cent. This, I believe, shows steady progress in what we are trying to achieve. In 1988, there were 17,661 lost-time accidents; in 1989, there were 16,019 lost-time accidents. That is a 10 per cent reduction. I only wish it was a 50 per cent reduction.

Let me give you an example of holding the employers responsible. We had a job-site accident here, a serious one. On the Tuesday, the contractor went on the project and found his superintendent standing on the top of the steel protection for the workers. He told him to get down, that he was going to meet with an accident. The next day he did the exact same thing, stood in the same position, and is now lying critically ill in hospital with back injuries. What can we do to avoid that type of accident?

Mr Wildman: Get a certified worker to stop the job until he does it right.

The Chair: Go ahead, Mr McIntosh.

Mr McIntosh: We would need to have one certified worker for every employee on the job.

Mr Dietsch: Thank you, Mr McIntosh. I appreciate your consistency in trying to answer the question.

The other point I would like to raise with you is with respect to worker certification. Your comment is that it reduces the opportunity for general training. I am curious to know, as a result of certified individuals who are perhaps going to have a higher standard of training than some of the individual workers on the job site, how that would interfere with general training.

When you give one person a certificate program, if you will—and you have to remember that these qualifications are going to be addressed by the agency that is going to be put together as proposed in the bill—how do you feel that is going to take away from the general training of other individuals? I fail to understand that.

Mr McIntosh: I think one of the factors would be the cost of training these specialized or certified workers. Second, I am sure—and I am not trying to be smug, but there is the old saying: “Hey, that’s not my problem. That’s Joe, the certified worker’s problem.” We feel that the average person would eventually take the attitude that it is not his responsibility to report any unsafe condition. That is someone else’s job. We would like to avoid that.

The Chair: Would you allow Mr Riddell a question, Mr Dietsch?

Mr Dietsch: Yes, fine.

Mr Riddell: I raise this question with the thought in mind of a young fellow I taught in school who is no longer with us, but I know this fellow to have been a very meek and mild-mannered chap, quite timid. He reported to work one morning, and he was operating a lift of some kind—it could have been a backhoe—and there were other workers waiting for him to get his job started. It rained the night before, and the backhoe, I think, was sitting in water. He started his operation and got electrocuted. He is no longer with us.

Knowing the timid nature of this chap, he would not have refused to operate that, because as I say, there were other workers waiting for him to get the job started and he knew that he would be holding these other workers up. Not the type of person who wants to get himself in wrong with his employer, he went ahead and he did the job. Now had he had a certified rep to bring on to the job and say: “Look, I think this is dangerous. What do you think?” he might have been living today.

Had he refused the work, there was nothing to stop the employer from going down the line to one of the workers standing around—and some of these workers have just immigrated to this country, do not speak the language too well and are damned glad to have a job. So he goes down the line and says: “Look, this fellow refuses to operate the backhoe. Would you jump on and do it?” The guy is not going to refuse because he knows that it is a job that he was maybe lucky to get in the first place.

I guess what I am saying is, do you not see all kinds of reasons why workers would not exercise

the right to refuse? But if there was a certified worker rep that they could turn to and this rep said, "By all means that is dangerous, and we are certainly not going to operate until that is rectified," which this bill is trying to address, can you not see some merit in having a certified worker rep to give, if nothing else, a second opinion to a person who knows he should not be operating but is a little timid about doing anything about it?

Mr McIntosh: I find it very difficult to understand your question from the point of view of the example that you give. Surely to God, no operator, especially an operating engineer, would have even got on to that machine with any electrical danger in and around it. I would suggest that probably—

Mr Riddell: He was not aware that the wires were exposed.

Mr McIntosh: Then how would the certified safety man be aware that the wires were exposed? I am sorry, but if the worker did not see it, there is the possibility that the certified worker would not see it.

Mr Riddell: He might have picked up the fact that the machine was sitting with water around it, whereas the worker did not. The worker jumped on to the machine and proceeded to do his work. The certified rep might well have seen that there

was a possibility, whether the wires were exposed or not. I do not think anybody is going to work in water if there are wires—

Mr McIntosh: If he was operating a backhoe or if he was operating a crane, he must be licensed by the province of Ontario.

Mr Chairman, I happen to be the chairman of the largest operating engineers' training school in Canada which is here in Ontario. I can assure you that before any operating engineer is licensed, he goes through very stringent training and would know enough that, had the water been a danger, he would have looked for either overhead or underground cables. I do not know how a certified worker would see any more than the average operating engineer who operates these cranes as safely as humanly possible.

The Chair: We are over time actually so we should bring this to a halt. Mr McIntosh, thank you for coming before the committee.

Mr McIntosh: Thank you very kindly.

The Chair: A reminder to committee members, if they are leaving this afternoon, to check out of their rooms. Tables have been reserved—no, they have not been reserved, but I think there will be room there. We are adjourned until 2 o'clock.

The committee recessed at 1213.

AFTERNOON SITTING

The committee resumed at 1401.

The Chair: The committee will come to order as we continue our examination of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The first presentation of the afternoon is from the Chatham and District Labour Council, and I think Randy Hope is here. Gentlemen, if you will introduce yourselves, we can proceed. You have 30 minutes to use either for your presentation or to allow a bit of the time for an exchange with members. The microphones will be operated from the console up here so you do not need to worry about them.

CHATHAM AND DISTRICT LABOUR COUNCIL

Mr Hope: Thank you very much. To my right is Harry Warner, who is the second vice-president of the labour council and president of Canadian Auto Workers Local 127 out of Chatham, and to my left is Romeo LeBlanc, who is a health and safety representative and the person we go to for consultation on health and safety legislation and for health and safety in our labour council. I am Randy Hope, president of the Chatham and District Labour Council, and also president of CAW Local 1941.

On behalf of the committee let me thank you for the opportunity to come before you today to present our concerns on Bill 208, the proposed amendments to the Occupational Health and Safety Act and the Workers' Compensation Act. The Chatham and District Labour Council represents approximately 14,000 workers in a wide and diverse range of industries and offices throughout the Chatham area.

Our concerns about Bill 208, however, extend far beyond our own membership. There is a constant potential for injury for anyone who accepts employment in this area. Our brief for the most part will deal with the contents of some of the shortcomings of the proposed amendments to Bill 208. When Bill 208 was first introduced in January 1989, it was examined in detail by the labour communities and, with certain reservations and the knowledge that it was far from perfect, it was by and large endorsed. On 12 May 1989, the Chatham and District Labour Council representatives met with Essex-Kent MPP Jim McGuigan and Chatham-Kent MPP Maurice Bossy, at which time both MPPs stated that Bill 208 was a good bill as presented by Greg Sorbara

on 24 January 1989. It was, we feel, in large part due to the consultation that went on with the labour movement of this province.

It was, from our perspective, the minimum that could be accepted if the workplaces in this province were to be safer and healthier. The Chatham and District Labour Council leadership convinced our members that the bill deserved our support because this bill clearly put a priority on the health and safety of the workers in Ontario by strengthening the Occupational Health and Safety Act.

On 12 October 1989, when Gerry Phillips, the new Minister of Labour, introduced the second reading of his proposed amendments, the priorities had shifted noticeably to the productivity and competitiveness of the province and away from the health and safety of the workers. The proposed amendments from the Minister of Labour would successfully gut the good intentions of the original bill. These amendments would make it impossible for us to accept or to participate in a system that we consider is a step backwards from the present situation and does little or nothing to prevent the never-ending, increasing toll taken in our workplaces.

It is our opinion that the amendments proposed by the Ontario Federation of Labour, the Canadian Auto Workers union and other affiliates must be implemented in the legislation for the bill to be successful. Anything short of that will make it unacceptable to this labour council and the membership we service.

Mr LeBlanc: We would like at this time to emphasize a number of points.

1. Public sector workers are limited or exempted from the right to refuse and the right to stop work: In the present act and Bill 208, correctional officers, police and firefighters are exempted from the individual right to refuse and the right to stop work. These workers are trained and will use their rights responsibly. They will not refuse to fight fires, fight crime or guard inmates, but they should not have to commit suicide either.

2. Workers affected by a right to refuse or a stop-work order, either by a certified member or an inspector, are not paid: In the present act and Bill 208, workers who are unable to work because of an individual's refusing to work or as a result of a stop-work order from either an inspector or a certified member lose pay, while

the person actually refusing or stopping work is guaranteed some payment.

Needless to say, this puts tremendous peer pressure on workers not to use their rights. If a refusal or a stop-work order is upheld by the inspector, surely the workers affected must be paid. The employer is responsible for maintaining safe and healthy conditions and if it takes an individual refusal or a stop-work order from a certified member to ensure that the unsafe conditions are addressed, workers should not have to suffer the double jeopardy of being at risk and also suffering wage loss when they attempt to correct the situation.

3. Employers are not prosecuted for reprisals against workers: When a worker suffers a reprisal and the Ontario Labour Relations Board determines that it was not justified, it is clear that the employer has violated section 24 of the act. Yet at present the ministry does not prosecute employers for violating section 24. We have situations where an employer has deliberately not paid a worker who refused unsafe work just to intimidate the workforce. When the OLRB ruled that the employer had acted improperly and must pay the worker, the employer finally complied many months later, yet the employer suffered no reprisal for such a clear violation of the act. We need an amendment that ensures section 24 violations are also subject to prosecution.

4. Ensure inspection of the entire workplace once a month: The present act allows inspections "of the workplace not more often than once a month," which places a limit on the number of inspections but allows the entire workplace to be inspected each time. Bill 208 provides for inspection of at least part of the workplace on a monthly basis and requires that all the workplace be inspected in a 12-month period. The committee felt that this wording in Bill 208 is in fact a step backwards for many unions who now do full workplace inspections.

Since inspections have been identified as an important tool for identifying and resolving health and safety concerns, yearly inspections are simply not sufficient to ensure safe and healthy workplaces. The committee feels that inspections must be at least monthly and of the entire workplace, especially since there is a lack of inspectors doing cyclical inspections.

5. Ensure both labour and management members of the joint committee come from the workplace: Bill 208 requires that labour members of the joint committee must come from the actual workplace but management members need not. This was to prevent full-time union staff

representatives from placing themselves on committees because the ministry believes that an internal responsibility system should be internal and the people directly affected should be the people to participate. If that is true, then it should apply to management as well.

Some of our unions have had problems of management members coming from the central school board or the head office with no understanding of the local problems and they have been disruptive and destructive.

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6. Ensure that no worker is assigned a refused job until the issue is resolved: One of the problems now is that when a worker uses his or her right to refuse, the employer will simply assign another worker to do the job and often will assign someone new or on probation. The employer is required to inform the next worker of the refusal and he or she can also refuse, but because of this situation, he or she may be intimidated. The right to refuse is used in dangerous situations and the committee believes that the job should stop until the problem is resolved. This amendment has been proposed by the ministry in its old Bill 106. The continued ability to assign another worker negates the purpose and effect of our right to refuse.

7. Require certified members to investigate all workers' complaints: Bill 208 states that a certified member may investigate a worker's complaint. If the internal responsibility system is to work and individual workers do not have to move to the last resort of refusing to work, then there must be a mechanism for their complaints to be investigated.

If there is not a requirement on a certified member to investigate all complaints, then it is left to his or her discretion and he or she can also be subjected to intimidation by the employer refusing to let the certified member do the job. This amendment would enable the one worker certified member to be called in to investigate on an off-shift with time and a half pay, which in turn would encourage more certified members to be trained. A lot of times companies intimidate workers on off-shifts to perform unsafe work. That would not be done if certified members were present.

Mr Warner: In conclusion, labour across the province of Ontario has waited a long time for reform of the Occupational Health and Safety Act and this committee, along with the government, now has the opportunity to produce an act that would reduce the pain and suffering that far

too many workers and their families endure in our area because the system has failed them.

In thanking the committee for its time, let's make the Chatham and District Labour Council's position crystal-clear. If the government is prepared to accept one worker killed and more than 1,800 injured every working day as a standard of doing business in Ontario and if business and government may be ready to settle for business as usual, the Chatham and District Labour Council cannot and will not accept this as a standard in Ontario.

We urge the committee to join us and the rest of the working people of the province in making Ontario the safest place to work by implementing the amendments of the Ontario Federation of Labour and affiliates.

The Chair: Thank you, gentlemen. As a matter of interest, you say you represent 14,000 workers. Do you know what proportion of those would be in the public sector?

Mr Hope: What proportion?

The Chair: The reason I ask is your concern about the people not covered.

Mr Hope: We have members of CUPE and OPSEU, which is one of the sectors we represent. We do have people who come to us who are not directly affiliated with this labour council. That is why we included that it goes beyond our own membership. We do have a number of consultations with other organizations or associations with health and safety.

Mr Dietsch: I would like to thank you for your presentation this afternoon. I would like to talk to you about the assignment of workers to a refused job. In some of the earlier presentations, there were presentations from a particular union with respect to a refusal on a job and then replacing an individual to do that work. They were suggesting a joint meeting of the certified member, the union and management before the individual worker was replaced on the job.

The question I asked of them at that time was whether they would be agreeable to the same type of standard on the shutdown, recognizing that if it was a joint decision to start it up, maybe it makes sense that it would be a joint decision to shut it down. I would like to have your comments in that respect.

Mr LeBlanc: It sounds fine, provided that there is no big time span between that joint consultation.

Mr Dietsch: If it was done at a very early time limit and there was not a great deal of time lapse

in between the two, then it sounds like a reasonable approach?

Mr LeBlanc: It sounds like a reasonable approach.

Mr Mackenzie: With respect to the same question, the weakness of course in the argument that has been put by my colleague is what happens if the management rep says no. Clearly the worker must have the right to shut that down.

Mr LeBlanc: Yes.

Mr Mackenzie: I have one question only, and that is in your brief you state that your labour council, as did many others in Ontario, accepted that while the bill was not everything you wanted, you did urge your affiliates, your members, to support Bill 208 as brought in originally by the previous minister, Mr Sorbara. Indeed, you also indicate that you had a commitment of support from two of your local government members for that bill.

Mr LeBlanc: Mr Bossy and Mr McGuigan, yes. At that time, they agreed that Bill 208, without any amendments, was acceptable to them.

Mr Mackenzie: What then do you see in what has happened, the new minister, obviously as a price of his job, bringing in a number of amendments and a number of suggestions that obviously gut the bill? Do you consider this a betrayal of the commitment you made to sell your members?

Mr Hope: When we went to Jim McGuigan and also Maurice Bossy at that time, we made a specific comment asking, "Have you been approached by business yet?" They told us no. So we were the first ones on their doorsteps to get their commitment. As a matter of fact, I think Maurice Bossy even went further in saying there could be some good things that could be added, but as proposed by Greg Sorbara, he supported it.

At the same time we had a number of confrontations with Bill 162, and what Maurice Bossy, and I presume Jim McGuigan, had said to us was that Greg Sorbara had good intentions behind this bill and that is why they supported Greg as the minister. Why the government went ahead and changed the ministers of labour is a good question and a question that I think most of the labour movement need answered. I think we can pretty well guess why they changed the Minister of Labour, a pressure from business maybe, but you know it is something that we looked at when we asked why was there a change. We have to listen to our local MPPs, not necessarily always agree with them. But when

they said they felt that Bill 208 was good, we thought it was quite acceptable because it is not perfect but it is a stepping-stone.

Mr Mackenzie: What do you think it says for co-operation, which is the theme of most of the business groups and one of the hopes, I think, of the government, even in this legislation, to ask labour, which the previous minister specifically did, to go out and sell this particular piece of legislation to their members and then have the legs kicked out from under them by a change in ministers? Do you think it bodes well for the future of labour relations in Ontario?

Mr Hope: No, if you are asking.

Mr Fleet: I appreciate the position that you have taken with respect to the bill and the possible amendments that may arise out of this process and the comments that have been made by Mr Phillips. However, the position that the government has taken, and one that I agree with, is that this bill, whether or not those amendments go in, is a significant advance for workers.

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The reason for that is because there are a number of provisions that are brand-new: The health and safety committees established in some 20,000 new workplaces; the whole concept of the certified worker which is involved for the first time; the creation of the Workplace Health and Safety Agency as an umbrella structure to make sure that there is a greater emphasis on health and safety in the workplace; the complete restructuring of health and safety associations; the involvement of equal union representation to management both on those committees and on the agency itself; the reality that under the new legislation every director and every officer of a corporation will be obliged personally to take all steps to comply with the act, and if they fail to do so, they leave themselves open to not only a fine but jail, up to 12 months in prison. On top of that, the number of workplace inspectors has been increased by some 30 per cent since 1985 by this government.

I am sure that is not even a complete list, but given that kind of improvement, we have contended, and I have indicated previously, that this act is going to be the most progressive labour legislation in North America. I am not asking you to not seek more—I think that is to be expected—but would you not at least acknowledge that there are a number of rather significant changes, progressive changes, that are going to assist in what I think is the shared objective, which is to reduce the number of injuries and certainly the

number of deaths in the workplace right across Ontario?

Mr Hope: You put a couple of points out there. Number one, you can implement legislation. I do not come from a Big Three auto industry. I am from the independent parts supplier sector. A lot of these companies dictate to us. You can set up all the committees you want in the world, but if we have no rights and we are dictated to by companies and influenced and harassed into doing things that are not needed, unless we have some power in our hands that we can fight back with, the legislation means nothing. If you are talking about the proposed legislation that Gerry Phillips has introduced, he has deteriorated what is currently something that we could endorse. It was a stepping stone. We feel, as I indicated through the brief, it is a step backwards for us.

Mr Fleet: A step backwards from what?

Mr Hope: A step backwards from the proposed amendments that first came out by Greg Sorbara.

Mr Fleet: But the overall bill is still moving forward. I appreciate you want more. I understand.

Mr Hope: It is a stepping stone, but I think what we want to do is increase it.

Mr LeBlanc: Mr Fleet, you said that the MOL inspectors went up an X amount of percentage. What was that percentage again?

Mr Fleet: Thirty per cent since 1985.

Mr LeBlanc: Since 1985, maybe, it has gone up 30 per cent, but the Chatham district labour area has definitely not seen that. We are seeing fewer and fewer inspectors being called in to do cyclical reviews. For example, just the plant that I work in, we have not had an inspector since 1985. You are talking four years, and yet we are not seeing that, so I do not know where those numbers are coming from.

Mr Fleet: I appreciate the fact that your experience is what you have told me and I accept that. There are people here from the ministry and when we hear the local information, that has been quite useful, to get an understanding of what impact, if any, there is that is occurring in your area. I think we all recognize that we would all like to have more inspectors kind of all the time, if it was possible. The reality is that this act is based on the internal responsibility system.

The other point that was raised is that you need rights. There are additional rights. The right to refuse is expanded upon in Bill 208, even with the amendment. We are looking at a variety of

other things. There are rights, even with the committees. When the committees make recommendations, employers are obliged to reply. They cannot just ignore them. That puts an onus on the corporation. So I appreciate very much your concerns and we are listening, because we want to improve the state of safety in the workplace.

Mr LeBlanc: Like you just said though, all we can do right now is make recommendations to the employer. The maximum thing we can do is make those recommendations.

Mr Fleet: You still have the right to refuse dangerous work. Under the current act you have that.

Mr LeBlanc: Under the committee section, section 8, it says that all you can do is make a recommendation to that employer and now, under the new bill, it says that you have up to 30 days that the company can reply. A lot of the times, though, what we have seen so far anyway, is that the companies do not take those recommendations. We, as labour, have to be forced to wait and wait and wait or call in an inspector to try and get those recommendations adhered to because most of the time, 90 per cent of the time, 95 per cent of the time, those are all direct violations of the act itself, whether they be the regulations or the act.

Mr Fleet: Thank you.

The Chair: There is time for one more question. Mr Mackenzie.

Mr Mackenzie: Obviously we now have an attempt to sell the bill based on the number of things that may be of some use that are in the legislation and not pay any more attention to all of the negative things, because there are simply no answers for them. But in two of the things that have been raised, the broader right to refuse and the claim that you will have certified worker reps, what good is a certified worker rep if Phillips's amendments go through and they do not have the same right to refuse that they have had prior to this point in time? And what good are the work conditions as far as labour is concerned, the work activities, if the "imminent" provision also goes through, which means that that is worthless and definitely a step backward from what we have even in current legislation? Can you tell me?

Mr Fleet: No, that is not right.

Mr Hope: If I just may comment on that, as I noted earlier in the first part of the brief—

Mr Mackenzie: Your advisers are not doing very good.

Mr Hope: —we endorse Bill 208 as proposed by Greg Sorbara. We would not be here today if we did not feel that the amendments that Gerry Phillips has introduced were good to our members. I think we have got to the point where we are tired of our workers being injured every day. We are tired of the harassment of employers to the small parts industry, to the nonunion people. We are tired of seeing deaths occur in our families in the areas we represent. I think it is time that this government—do not wait to implement legislation that will protect workers. Take immediate action, get the legislation in that we are requesting, make our workplaces safer. We will still be competitive, there is no doubt about it.

We have the free trade agreement that is still haunting us, but I think overall, if the companies are using excuses that if health and safety costs them money they are going to leave Canada, I do not know about anybody else, but my life is important to me and I will stand up for my life.

The Chair: Mr LeBlanc, Mr Hope, Mr Warner, we thank you very much for your presentation.

The next presentation is from Chrysler Canada. Gentlemen, we welcome you to the committee this afternoon. I think you know that the next 30 minutes are yours. Introduce yourselves. We can proceed.

CHRYSLER CANADA LTD

Mr Cooper: I am Cody Cooper, manager of labour relations and safety. On my right is Ronald Hunter, manager of occupational health and safety.

Chrysler supports the consultative approach and welcomes the opportunity to comment upon the proposed amendments to the current Occupational Health and Safety Act.

The Chair: Can you pull the mike a little closer to you, please, Mr Cooper? They are not picking you up.

Mr Cooper: In the materials released 12 October 1989 the Minister of Labour (Mr Phillips) indicated Bill 208 "will enhance protection against on-the-job injury and illness." Chrysler believes programs are already in place in all of its operations that will enhance such protection. Chrysler is proud of the innovative joint programs it has developed with the Canadian Auto Workers to provide what we believe to be the safest work environment for its employees.

Plants of 1,500 or more employees currently have full-time health and safety representatives,

with part-time representation in smaller plants. Pursuant to jointly developed programs, health and safety representatives are trained in a variety of pertinent subjects on an ongoing basis. Employees have received training formulated jointly and delivered largely by union instructors selected from the workforce to increase awareness in workplace hazards, along with their rights and duties, according to the Occupational Health and Safety Act.

Chrysler does not believe Bill 208 will enhance protection against on-the-job injury and illness over that of our present joint programs.

The minister also stated, "It will promote the productivity and international competitiveness of the province's workplaces." We do not accept this argument. Automotive firms in Canada are under increasing competitive pressure. Downtime and lost production related to frivolous work refusals under the current legislation only increase these pressures. In today's highly competitive automobile industry, with a significant production overcapacity, only the most efficient operations will survive. Sourcing decisions should not be influenced by legislation which is burdensome and does not promote the objectives which it purports to.

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The proposed amendments do not address our current concerns and will only add to our woes.

The current legislation has been subject to abuse in our plants. Neither the current legislation nor the proposed amendments address the unique problems associated with the assembly-line process where frivolous work refusal can impact hundreds of operations not related to the alleged conditions underlying such refusal.

Bill 208 has the potential to increase rather than decrease abuse in the workplace, whereby those who wish may attempt to achieve considerations other than health and safety matters.

The minister noted the approach to health and safety was "rooted in the idea that the people in the best position to exercise effective control over the risk of workplace illness and injury are employers and employees who are aware and informed, and who work together as constructive and committed partners."

We support this philosophy underlying the concept of internal responsibility. However, we also acknowledge the need for safeguards in the event the power and responsibilities arising therefrom are directed towards matters not primarily concerned with health and safety.

The assumption that the parties "work together as constructive and committed partners" is valid.

There is a growing environment of mutual respect; however, the company and the union are not always of one mind and individuals have the ability to abuse the legislation.

The current legislation has been abused since its enactment in 1979 by individuals who refuse to work without first reporting an alleged hazard and/or prolong the investigation and resolution related to such hazard for purposes of obstruction. Experience has indicated that worker representatives generally consider the act of refusal a personal right and defend the worker position regardless of the perceived level of danger.

[Interruption]

The Chair: Order, please. Excuse me, Mr Cooper. I thought we had an agreement with the audience that people who are making presentations had the right to do so without harassment, and I would ask you to respect that.

Mr Cooper: Section 23 should be amended to allow individual recourse to the right to refuse unsafe work only in cases of urgent hazard. In addition, the legislation should impose a duty upon the worker representative to advise the worker whether or not such level of danger really exists. At a minimum, Bill 208 must incorporate sanctions to deter inappropriate recourse to health and safety legislation.

The need is highlighted by recent experience within one of our assembly operations. The production rate at one of our plants was reduced in response to market conditions. As a result of this unfortunate necessity, job assignments were revised in accordance with the new production rate and employees were scheduled to be laid off.

Worker representatives informed management that they would use all means available to forestall the layoffs. Thereafter, the joint committee investigated 24 first-stage work refusals in a period of four working days.

[Interruption]

The Chair: Order, please. Let the gentlemen make their presentation to the committee. We want to hear what they have to say.

Mr Cooper: This activity took place in a plant which had experienced an annual average of 18 work refusals over the prior five years.

On five occasions, after time-consuming and distracting efforts by supervision, engineering and safety management failed to satisfy the workers, the Ministry of Labour was involved with second-stage refusals. On all five occasions the ministry ruled "not likely to endanger."

The work refusals in which the worker agreed to return to work were generally resolved by adding manpower until worker accommodation could be attained through reinstruction and/or minor workstation improvements. The majority of such accommodations were made to end the confrontation rather than for legitimate safety reasons. This represents an experience not at all uncommon and, again, most definitely not conducive to productivity and international competitiveness.

The ability to shut down work must be a joint decision to prevent abuse and foster appropriate systems of internal responsibility. The competitive realities of the vehicle manufacturing industry warrant attention and action to prevent rather than expand opportunities for abuse of the right to refuse unsafe work.

Certification of committee members is welcomed provided the process requires attainment of objective minimum standards. Instruction and financing of same should be a legislative undertaking. Notwithstanding the training which has taken place both with management and union, grandfathering of incumbents should be resisted in order to ensure uniformity of understanding and enforcement.

The introduction of standardized training, provincial funding thereof and recognition of certification supports incorporation of the imposition of a duty upon the representative to advise the worker of the level of danger in line with the internal responsibility system conceived by the Ham commission and promoted by the Ministry of Labour.

The present size of the joint health and safety committees, as negotiated between the parties, has proven workable where both management and worker representatives are informed and trained. Additional membership would not enhance performance or productivity.

Offices in a geographic location are best served by the same representative. We would wish to continue this practical approach.

Our concern with respect to the proposed agency and the membership thereof is the agency becoming a bargaining forum wherein the proposed neutral chair would have to arbitrate significant items, such as the content and manner of delivery for general workplace training which could result in a major expense, again impacting productivity and international competitiveness.

The neutral chair is expected to be a difficult position to fill and will be subject to criticism based on voting performance.

We recommend that the agency have only advisory power and not be given power to impose new standards without legislative due process.

In summary, the right to refuse unsafe work has been abused in circumstances unrelated to health and safety, and in light of this it would be inappropriate to extend this without first addressing the current problems. The proposal of restrictions upon the individual right-to-refuse situations of imminent danger, incorporation of a duty upon a certified representative to advise a worker of the level of danger and sanctions applicable to certified representatives who engage in inappropriate behaviours would alleviate our concern.

The administrative and financial concerns arising from the proposed agency structure would be offset by limiting that body's role to that of providing advice to the minister, thereby providing for legislative due process.

The Chair: Mr Cooper, on page 2 of your brief you state, "Chrysler does not believe Bill 208 will enhance protection against on-the-job injury and illness over that of our present joint programs." Are you referring there to Bill 208 in its original form, in its proposed amended form or both?

Mr Cooper: Both, but specifically the proposed format.

The Chair: Okay. Thank you.

Mr Dietsch: I am somewhat taken aback by some of your comments with respect to frivolous work refusals yet recognize in your documentation the concern that you outline. I guess it brings me to the question of whether or not you are supportive of a greater partnership and a greater training effort on behalf of the workplace partners or whether you feel that it should be just a direct management responsibility.

Mr Cooper: No, we do not feel it should be a direct management responsibility. I guess the point I am trying to make is that we feel that within Chrysler we have some very fundamentally sound approaches taken by the CAW leadership and Chrysler itself. Our concern does not lie with the CAW leadership or the committees, etc.

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The concern we have is primarily with the fringe player, the person who can come to work for whatever reason and do so much damage to the system from a production and economic point of view. We are just ripe for abuse in that sense and that is the sense in which we have directed our comments to abuse by single, individual people, not the workings of the CAW and

Chrysler as a whole, and the fact that problems are or are not addressed. We really honestly believe that we have a system that is working well and that for the most part is based upon mutual respect, but we still have this ability to be abused by the people who do not wish to follow the systems that are in place and take it upon themselves to engage in this behaviour, where we feel it could be addressed by the system.

Mr Dietsch: From what you outlined in your brief, it looks to me like one particular occurrence encouraged your presentation or the thoughts behind your presentation, with the way you document one particular work stoppage.

Mr Cooper: That was just a most recent incident.

Mr Dietsch: I guess that leads me to the question, how many times has this gone on in your workplace? Is this a one isolated time? Is this something you feel goes on all the time in your workplace?

Mr Cooper: I do not think it would be unfair to state that when we have workforce adjustments those are the occasions when we are most apt to experience work refusals.

Mr Dietsch: In relationship to those kinds of times when work is refused, have they always associated themselves with work slowdowns in the marketplace, layoffs, etc?

Mr Cooper: I would not say that the occasions we would deem frivolous work refusals have been solely related to those situations. I think those are the situations wherein the people outside of the health and safety contingency would tend to come to the floor and abuse the legislation for, in our mind, interests that go beyond actual health and safety and are more of a deterrent to us adjusting our manpower.

Mr Dietsch: I want to try to get a handle on what we are talking about in terms of the number of times these sorts of things happen. It is a case of wondering whether this is done 80 per cent of the time, whether this is a small portion of the time, whether this is a couple of isolated cases you are drawing attention to. Surely to God, out of all the employees you have in Chrysler, I would think that this would be considerably limited in terms of the amounts of kinds of employees who would do this sort of thing.

Mr Cooper: Let me give you some examples without mentioning which plants. In 1987, in one plant we had 116 work refusals. In that year we lost 1,806 vehicles that were already sold from that plant. In 1987 in another plant we had 24; we lost 52 vehicles. In 1988 we had 91 work refusals

in an assembly plant where we lost 665 sold vehicles.

In the last three years we have had 2,784 sold vehicles, which at an average of, two plants, 2,923, at \$20,000 retail approximately, we have lost significant millions of dollars. Now at the same time we have had Ministry of Labour inspectors in our plants. In 1988 we had 35 visits; in 1989 we had 35 visits. Our orders have gone down 61 per cent, but we still have the work refusal going on.

Our accident frequency has gone down from 1988 to 1989 by 17 per cent. Our safety frequency has gone down by 16 per cent. I am saying that I believe there are legitimate programs in place. What we are suffering is not the majority or the mainstream of either the workplace or the union representatives. We are suffering the fringe player effect and I think there has to be something in place to address that, and that is our major concern with extending the right to refusal in any way, shape or form until we have addressed this problem.

[Interruption]

The Chair: Mr Dietsch is asking the questions.

Mr Dietsch: In relationship to that kind of a scenario, could you tell me, those kinds of shutdowns are individual work refusals done under the current act as it exists today. Under the proposed changes with the act, I am concerned in respect of the kinds of joint health and safety committees that you have in your workplace and whether or not you are going to be able to build on the partnership and the harmony and enhance the training of individuals in the workplace.

The CAW was before us this morning and put forward a very thoughtful brief and presentation before us outlining a number of concerns, certainly indicating a very strong desire for a stronger joint partnership. My last question to you is, do you support that kind of a concept that would enhance that workplace?

Mr Cooper: I would support that, I think almost undeniably. I think the efforts that have taken place with the CAW at almost any level you want to address have indicated that both sides of this dichotomy here have this approach and can in fact put their minds to some very positive things. I will give you an example of one plant having a thing that is as simple as a screw and fastener committee, which has greatly, I think, been a factor in reducing the actions and injuries in one plant and making workers jobs doable, for lack of a better phrase. We are not

talking about the institutions here. We are talking about the fringe.

The Chair: Mr Cooke, had a supplementary to that.

Mr D. S. Cooke: Taking a look at your statistics and the example you give of abuse, you indicate that the average for the five previous years has been 18 work refusals in what I guess is the full-size van plant; that is the plant you are talking about. Even accepting your argument, and I do not think you have presented documentation to prove that all 24 were frivolous, but even if we accepted that, if in the five years previous there has not been abuse, that there have been 18 work refusals, how can you indicate that because of this experience, for some reason that proves your fact that the right to refuse work has been abused by your workers? I think instead what you are saying is that under a special circumstance you believe there was some abuse, but in the history of the five years previous to that, it has been exercised in an incredibly responsible way by the workers in this plant.

Mr Cooper: I think the fact that there had not been any abuses in that plant—I would suggest to you we would very strongly agree that the majority of the work refusals that occurred in that plant in the previous five years reflected a relationship between the two parties in that plant which may or may not have changed given the workings of the CAW and management together, which reflected what we are trying to present should be the norm for this industry.

In fact, I would agree with your that their history was the type of history that we would like to see continued. What I am worried about is that I would relate to the work refusals in the last part of 1989 as being indicative of something that very seriously has to be looked at in terms of what can happen if this right is abused. That is the instance we put forward here because of our concern with the potential abuse for that.

The Chair: Mr Dietsch, were you finished?

Mr Dietsch: There was one quick question that I wanted to finish up with. I know you have indicated you are concerned with about the fringe, but I do not understand why you would be concerned about this certified worker, who would have all the additional training and expertise. Why would you have a concern about that part?

Mr Cooper: The concern is that we have people who in large measure, on either side, we feel have the type of training and the ability to make the decisions that are contemplated within

the scope of the act. We also feel that there have been enough examples wherein the political end of the spectrum has caused some abuse to the integrity of the health and safety systems both are trying to present.

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Mr Wildman: On page 5 I am trying to understand these figures. You point out 24 first-stage work refusals. Then you go on to talk about five of them and you said that on all five occasions the ministry ruled "not likely to endanger." What happened with the other 19?

Mr Cooper: They were addressed, as I indicated there. I cannot specifically go into detail, but they were resolved on the shop floor. The five that went to the second stage basically were ergonomic-related and went to the second stage, notwithstanding that the ergonomist in the plant on management had already made adjustments in these jobs.

Mr Wildman: In other words, when you indicated that your number of accidents is down, it would seem to me that your evidence indicates a safety consciousness on the part of the workers in the plant.

Mr Cooper: Correct. They are more than fully aware of their rights and duties under this legislation.

Mr Wildman: That is good. Also, you mentioned the number of lost vehicles that resulted. Could you indicate how many stoppages you have had as a result of quality questions? How many vehicles did you lose?

Mr Cooper: Would you mind indicating how interrelated that is with the focus of this hearing?

Mr Wildman: Mr Chair, I am under the impression that we ask the questions, but if he wants to ask me, I will tell him. I am trying to find out what this does to your competitiveness, since that is the thrust of what you are talking about here. I want to know how many quality stoppages you got and how many vehicles you lost as a result of that and whether that is a benefit or not to your company.

Mr Cooper: The quality levels of our vehicles have been on the increase with the efforts of this workforce we have in the plants. That is a continuing thread throughout our operations. As far as the actual numbers that I have, I do not have that type of detail. Had I been aware that I was going to address the quality of our product, I perhaps would have brought some.

Mr Wildman: I was not questioning the quality of your product. I was questioning how

many quality stoppages, how many vehicles you lost as a result of those stoppages.

Mr Hunter: If I may, I think it is important to note at this time, before we get in a ravel here, that the concerns of the health and safety department are that of the health and safety of the workers. Quality is not our concern in the area that we function in, so to answer your question with confidence is very, very difficult. However, we could research it and we can get back to you. It is important that you understand that we have enough on our plate handling health and safety on a day-to-day basis with the number of full-time people we have in the workplace, both management and labour, that quality becomes second place to us.

Mr Wildman: Okay; I accept that, but I want to be able to put this into some context and so perhaps if you cannot provide it to us now, you can provide it to the committee subsequently: find out how many vehicles were lost, to use your term, as a result of quality stoppages so that we can compare that with the number of vehicles you mentioned lost as a result of health and safety stoppages. Then we will be able to put it into some context.

I would like to point out to you that I come from a part of the province that does not have a large number of manufacturing firms. We have resource industries mainly. I represent a lot of people who work underground in mines and people who work in the bush. I will tell you that as a representative of those people, there is no damn way that I am going to accept a change in legislation that says workers cannot refuse to work unless they are in imminent danger, because there is no damn way that a miner underground is going to have to wait until the rock is falling on him before he can quit his job.

Mr Hunter: I find that to be very emotional and it disturbs me that you will not honour our presence by giving consideration for the concerns we are raising here; that is, of the automotive industry. I find, if you do not mind me saying so, that you are grandstanding.

The Chair: We are not going to contribute to the debate on Bill 208 if we get into these kinds of exchanges.

Mr Mackenzie: I really wonder if all this presentation and dialogue means a heck of a lot in any event, for one specific reason. Going back again to page 2 of your presentation, you say:

"Chrysler does not believe Bill 208 will enhance protection against on-the-job injury and illness over that of our present joint programs.

"The minister also stated, 'It will promote the productivity and international competitiveness of the province's workplaces.'

"We do not accept this argument."

My colleague at the beginning asked you if you were referring to Mr Sorbara's or Mr Phillips's version. While you apparently like Mr Phillips's version better, you were referring to both of them.

You talked about the politics involved here earlier. There obviously have been, because almost every change being suggested to make Phillips's bill a little better came from suggestions from business and the chamber of commerce and the Canadian Manufacturers' Association. Even with those changes, you are telling us you do not want the bill anyhow, so I really do wonder what the purpose is, and I wonder how much more the government would have to give you before you would accept this piece of legislation.

Mr Cooper: I think we specifically indicated what would satisfy our concerns and that was addressed in the later pages of the brief. We are very much concerned with respect to the act because what you enact, we are going to have to live with as both parties. We would really like to see something that is workable and also respects the progress that has been made by the Canadian Auto Workers and this industry with respect to manipulating and running our own affairs, and also the fact that we have internally had difficulty controlling the fringe player.

Mr Mackenzie: We already have a bill that has been guided, as far as most workers are concerned, by amendments that your organizations have suggested, and now you are telling us it is still not good enough, that you need more. At least that is my real difficulty with this legislation.

Mr Cooper: We would not be sitting here indicating that we would like to see these changes if we were not in earnest.

The Chair: Mr Cooper and Mr Hunter, we thank you for your presentation and for the interesting exchange with members of the committee.

The next presentation is from the Amalgamated Clothing and Textile Workers Union.

[Interruption]

The Chair: Order, please. We have a witness before the committee. Mr Ducharme, we welcome you to the committee and the next 30 minutes are yours.

AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION

Mr Ducharme: It is too bad these gentlemen did not have more time, because they furthered what I am about to say and what we have been saying all day long. They were putting their foot in their mouth and I wanted to listen to it all the more.

I am presenting this brief on behalf of John Alleruzzo, the Canadian director of the Amalgamated Clothing and Textile Workers Union, representing 14,000 members in the province of Ontario.

[Interruption]

The Chair: Well, let's not interfere with Mr Ducharme's presentation, however.

Mr Ducharme: It is okay. I agree with him.

The topic of health and safety has always been very critical, both for workers and companies alike. As we progress through time, and new technology and time, there is an increased need for laws that are fair and just for everyone.

The Amalgamated Clothing and Textile Workers Union welcomes the opportunity to be able to present its views on this issue on behalf of the approximately 14,000 members we represent in the province of Ontario.

The Amalgamated is essentially an industrial union whose members work in communities throughout Ontario. Our members produce fine clothing, textile products, broadloom, caps, shoes and automotive and computer technology, just to name a few. Therefore, it is very important for us that any amendments to the current health and safety legislation, specifically Bill 208, take into consideration the concerns of our members, as well as the rest of the labour movement as a whole.

We agree with the provision in the original bill that calls for "joint health and safety committees to be established in workplaces of 20 or more employees; including 30,000 office and retail establishments and on construction projects expected to last three months." This, we feel, is long overdue.

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We also agree with the requirement for "worker health and safety representatives in all workplaces of between five and 20 employees," and that the committee be operated by "co-chairpersons."

In our estimation, those on the committee should be paid for the entire meeting, not just the "one hour paid preparation time."

Regarding medical emergencies, we agree that it is the "duty of the employer to pay costs, including lost time and travel, where a worker undergoes a medical examination required by law."

Clothing workers are inundated with repetitive strain and stress injuries. Including "activity" in the right to refuse unsafe work is certainly a positive step towards eliminating injuries in those situations.

We support the requirement for special training for "certified worker and management members in each workplace." Once certified, these people should have the right to shut down an unsafe operation.

The law should establish "a bipartite Workplace Health and Safety Agency, which is responsible for overseeing all of the training and research moneys available to the present safety associations, the Workers' Health and Safety Centre, the two labour-controlled occupational health clinics for Ontario workers and any research projects undertaken within the ministry or through grants to the outside."

There should be a more concerted effort to "ensure more training for health and safety."

We agree with the sizeable "increase in the maximum fine from \$20,000 to \$500,000." We believe there also should be prison terms for repeat offenders.

The Ontario Federation of Labour submitted 19 amendments to the bill as it was first presented in the House to the then Minister of Labour Mr Sorbara outlining specific changes that were necessary to make it satisfactory for labour, whether it be organized or unorganized. But, by this disappointing response, the minister has shown total disregard for the voices of the working people who will be affected by this legislation and whose lives are in the balance every working day. In fact, as we sit here today, there may be a life lost due to an accident.

We are not going to rehash these 19 amendments. Suffice it to say we are in total agreement with all 19. However, some of the amendments are more critical for us than others because of the diverse workplaces we represent.

The Amalgamated Clothing and Textile Workers Union fully supports the requirements for a bipartite Workplace Health and Safety Agency.

This agency should have full-time co-chairs from labour and management and six part-time directors from both labour and management. In our view, this is a necessity because the issues in health and safety are issues that affect employees as well as the employers they work for. The

minister's amendment for a full-time neutral chair does not create an atmosphere for resolving the issues; rather it creates an unfair advantage for one side over the other, as well as a type of carnival atmosphere.

Our view is that the neutral chair will no doubt be selected by the government, and his or her decision will eventually depend on what directives are given to be followed. We too are not in favour of a tripartite agency. It creates too much bureaucracy and the problems never get solved quickly.

Years ago, the companies used to bring lawyers, at least with our union, into negotiations and that just ruined everything for everybody right there.

When a job is unsafe and it is shut down by the certified labour member, the management certified member can start up the operation again. But imagine the chaos that the present language presents if an overzealous manager—and there are lots of them—concerned only with production decided to follow the law as it is written. We wonder where it will end.

Presently, if a stop-work or right to refuse order is given, the workers involved in that line are not paid. Is the law punishing workers for exercising their right to refuse an unhealthy or an unsafe working condition? And is the law allowing the employer to renege on his or her responsibility to maintain healthy and safe working conditions? This is one question we need an answer to.

Many of our clothing shops operate on the concept of piecework. These workers have to produce a certain amount of units at a certain rate of pay and must work at a fast pace to get paid a decent wage. Those who know piecework by name only do not realize that piecework is a totally different world out in the workplace. We ask, then, why should these workers be penalized for the employer's negligence when they dare to ask for safer working conditions?

With respect to in-plant inspections, it is no secret that not all employers are safety conscious. Most are concerned with production and competition rather than the health and welfare of the human beings who work for them, the human beings who become extensions of their machines.

Bill 208 provides for inspections of at least part of the workplace on a monthly basis and that the entire workplace be inspected in a 12-month period. We are talking about a life and death situation. Simply put, this provision does not adequately provide sufficient insurance for those

working in cutting rooms, dye houses, paint shops or boiler rooms. There have to be more inspections to force employers to see that the conditions in these places and the health and safety of their workers are just as important as the large profits they make.

Subsection 4(5c) of Bill 208 allows labour members on the joint health and safety committee to come from the actual workplaces, but the management members are not obliged to. We disagree with this provision because of the unique problems each workplace offers. It makes more sense that both members of the joint committee should come from a workplace where conditions are common to both.

On the question of certification, we feel that the union and its members should be responsible for selecting the individuals best qualified to be certified health and safety representatives and not an outside body. This is just a commonsense call.

Employers are allowed to retain and use technical advisers to represent a particular viewpoint. We strongly feel that labour should be allowed to bring along our advisers once there is a consensus within the committee.

A very important topic revolves around the issuing of a job that has been refused to a probationary worker. If a worker exercises his or her right to refuse because the job is unsafe, then it should not be passed to someone else. If a job is unsafe, it is unsafe. It remains unsafe until the problem is resolved by a certified health and safety representative or an inspector.

Certified members from management as well as labour should investigate all workers' complaints. If the internal responsibility system or the system for regulating and solving problems from within the workplace is to work, then all problems must be investigated and solved, not just a few selected ones.

Finally, we are particularly concerned that the health and safety agency will be involved in the actual disciplining of certified members who use their right to stop work. Presently, the Ontario Labour Relations Board decides whether the discipline is justified or not. Therefore, we feel that one discipline agency is enough. In common law, one cannot be tried for the same crime twice. We ask for the same to be allowed here.

1510

You have heard these before, but consider the statistics. Since the present Occupational Health and Safety Act came into effect in 1979, more than four million workers have been injured. As of 30 November 1989, 434,997 injury claims have been submitted. That works out to 1,820

workplace injuries every working day in 1989 and 227 workplace injuries every working hour. Add that to the 272 workers who were killed from 1 January to 31 December, 1989. We know about these statistics, Mr Phillips, because it is our brothers and sisters who are the sacrificial lambs for them.

The most intriguing statistic, however, is one that estimates that there are twice as many conservation officers protecting fish and wildlife as we have occupational health and safety inspectors protecting workers. This brings us to believe that the lives of fish and wildlife are worth more than human beings who work to build this province. The priority of the government, specifically the Minister of Labour, seems to be to appease the corporations and business interests. He has shown this very clearly by totally disregarding the 19 amendments forwarded by the Ontario Federation of Labour.

Workers in Ontario have suffered enough. We need a law that protects our health and safety and we need a law that has teeth and is just and fair.

Mr Phillips, it is not the corporate heads who work in the boiler rooms and dye houses; it is the workers who have to take the chances with their lives.

We are asking Labour minister Gerry Phillips to take some initiative to amend Bill 208 and include the 19 recommendations of the OFL. Mr Phillips has an opportunity now to stand and be what this country needs, a real leader, not just a politician who gives in to the whims of everybody but who will pay attention to what the people want, because right now across the world we are experiencing Gorbymania, I suppose is what you might call it. This man is giving in and who would have believed it? He is giving in to the needs of the people across the whole world, which even include our needs. This is a real chance for Mr Phillips to save a life or lives. I hope he grasps it.

Workers of the Amalgamated Clothing and Textile Workers Union are asking you to treat us better than wildlife and fish, Mr Phillips. Amend Bill 208 and include the 19 amendments so that the workers in this province can work and earn their living with pride and dignity.

The only thing I can say is, many times an accident is just a word until you have heard it. Maybe we sitting around this table do not know of it, but I for one know what it does, what a stupid accident does. When death occurs, it is a terrible thing, and we can stop that. The workers whose lives are at stake right now, all they get in the end is sympathy. My answer to that is, you

can always find "sympathy" in the dictionary between "shit" and "syphilis." That is about the only place where it is. Those are not Johnny Alleruzzo's words, by the way, they are mine. So with that, ladies and gentlemen, thank you very much.

The Chair: Thank you, Mr Ducharme for sharing your particular kind of wisdom with us. We appreciate it.

Mr Ducharme: I had to put that in.

The Chair: Mr Miller has a question.

Mr Miller: I think, in the last few paragraphs, "there are twice as many conservation officers to protect the fish and wildlife"—that is a concern. We have heard that phrase many times as we go around the province with the hearings on Bill 208. From my experience, we have worked on the mine safety committee looking at the northern mining industry, which is probably as high-risk an area as any, and I think our colleague Bud made that point just a few minutes ago. But it seems to me that the buddy system, even in the workforce, no matter where it is in Ontario, is still the best system.

I am a farmer and I have a brother who lost a finger when sharpening harvester knives. One was in a baler. No inspector could have been looking over his shoulder and telling him not to put his finger in that position. I think it was maybe tiredness from working long hours, and you forget or you lose concentration. I guess the point I am making, and I would like to put the question to you, do you not think the buddy system would be more beneficial than requiring more inspectors?

Personally, inspectors irk me. I think they are there to help us and advise us, but it just bothers me as an individual that somebody has to be looking over my shoulder all the time, unless he is going to be constructive and make a point.

Mr Ducharme: I suppose the buddy system could be a part of it, but I do not think it should be the main part of it, because I find out that among the people I represent, they do have buddy systems, but somehow through the workings of the management, they never seem to work all the time, for some reason or other. So all I can say is, possibly it could be an advantage to a certain degree, but the inspector should still be there to do his job.

Mr Miller: I am not disagreeing with that. I guess the other thing that became very clear in the last presentation and the confrontation we had between—again, our colleague indicating that he was asking a legitimate question. I think it could

have been answered in a straightforward manner, because quality is important to the company. It is important to the workers. If you are not getting good quality coming off at the end of the line, then you are going to lose a sale. I think the example they were using was in the case where there was a cutback in employment, and when you are going to lose your job, there is nothing worse than having to face that. That can cause perhaps some of the problems they were zeroing in on.

I still do not like the attitude that has been taken here, that we are comparing it to the protection of wildlife when we are talking about people and getting co-operation. I think that is what we are trying to strive for within this bill, to arrive at a process that is fair, and then it will get co-operation. In my view, that is what is so important.

Mr Ducharme: Even with the last presentation, that is what made me bring up the word "sympathy." At the same time, I think you mentioned that the worst thing you can do is lose your job. We think the worst thing you can do is lose your life.

Mr Miller: Nobody looking at it from the right perspective is going to doubt that.

Mr Ducharme: Then we should not be arguing.

Mr Miller: Arguing?

Mr Ducharme: Adopt the 19 amendments.

Mr Miller: We are trying to come up with legislation that is going to be workable, not only for you but for the general good of Ontario. I think that is what we want to do, and also get productivity. I think that is the bottom line.

Mr Ducharme: It did start off in a good vein, but it has been changed since, as we all know.

Mr Miller: The bill has not been put through the Legislature yet.

Mr Ducharme: That is right.

Mr Miller: So we still have room to manoeuvre.

Mr Ducharme: And that is why we are here.

The Chair: Thank you Mr Miller. Mr Wildman.

Mr Wildman: Mr Chairman, I will defer to my colleague.

Mr Mackenzie: The bill certainly started out as at least a small step forward for working people in Ontario. The problem is that it switched to a bill for management.

Mr Ducharme: Agreed.

Mr Mackenzie: I guess the new instructions to the Liberal team are to try to sell all the good things in the bill. If you look hard, you can find a few things, even I will admit that, very small in many cases. One of the things they raise is: "Look at what we are doing. Look at the higher fines." You yourself acknowledge in your brief, "We agree with the sizeable increase in the maximum fine from \$20,000 to \$500,000, but there should be a prison term for repeat offenders," which I think makes sense. But does that fine even mean anything when you take a look at the present situation, where the average fine in the last year—and we have had some horrendous accidents.

Mr Wildman: Should have a minimum.

Mr Mackenzie: My colleague says they should have a minimum fine, but the average fine has been running at \$2,346 in the province of Ontario. If with the new higher fine we are still going to run at those kinds of fines, does it do us much good?

Mr Ducharme: No, and that proves life is cheap, I guess, in some instances.

1520

Mr Dietsch: I want to ask you, with respect to your experience in the workplace, how many work refusals in your particular industry are you aware of?

Mr Ducharme: We are a really diversified union and I myself represent the clothing part of it. In our instance, there have been none.

Mr Dietsch: So you are not particularly aware of any. In your brief you are talking about probationary workers being put on jobs that workers have refused. Have you experienced that yourself?

Mr Ducharme: I think possibly, from what I understand, that in the textile division there have. The person who did the research on this—I am assuming this and you should not do those things, I realize—is referring possibly to the gentleman in Welland in the Gerber situation.

Mr Dietsch: The gentleman in Welland?

Mr Ducharme: From what I understand, the job was refused by a worker so they gave it to another person who did not quite understand or was a probationary person.

Mr Dietsch: No, that is not quite true.

Mr Ducharme: All right. If I have it wrong, I have it wrong.

Mr Dietsch: The fact is that worker did not inform anybody that he had refused any job.

Mr Ducharme: I see. All right.

Mr Dietsch: How many full-time inspectors are there?

Mr Ducharme: In our industry?

Mr Dietsch: I am asking you if you know how many full-time—

Mr Ducharme: No, I do not.

Mr Dietsch: You do not know how many?

Mr Ducharme: No.

Mr Dietsch: So is that something else the researchers dug up for you, the comparison between worker inspectors and conservation officers?

Mr Ducharme: I suppose so.

Mr Dietsch: Because the fact is that they are not double at all. In fact they are a long way from it. There are 44 worker inspectors in mining, 158 in industrial and 104 in construction, to make up the total of 306. There are 266 conservation officers and 50 management-type conservation officers. There has been a 30 per cent increase since this government has taken over in worker inspectors on the site. So I suggest that you correct the record with your researchers.

Mr Ducharme: I shall do so, but it does get across the point about wildlife and human beings. There is a difference.

Mr Dietsch: Not at all.

Mr Ducharme: There is no difference?

Mr Dietsch: There certainly is a difference, but I am saying "not at all" to the point you are trying to raise.

Mr Ducharme: I see.

Mr Dietsch: In relation to your particular workplace, how do the joint health and safety committees currently operate and work within your particular workplace now?

Mr Ducharme: Specifically?

Mr Dietsch: Are they done in a joint partnership with respect to the committees looking at and inspecting their workplaces? What kind of success rate have you had within the joint health and safety committees or how do they function?

Mr Ducharme: It seems to be working quite well in most places, with the exception of the odd one. We find some management are, I guess the word is "unscrupulous," in some of their dealings. They just do not seem to care. We had one fined here not too long ago for negligence, for finding people to do the job, to be honest with you, who were not really capable of doing it but

were picked by the management to do that job. He wound up being fined for his negligence.

Mr Dietsch: Are those isolated cases?

Mr Ducharme: That one is.

Mr Dietsch: That is not the norm, is it?

Mr Ducharme: Most of the people I represent—again, getting back to the clothing—seem to be people who are trying to do a good job, I must say. That is in clothing. I can only speak up for them because those are the people I deal mainly with.

Mr Wildman: Just to follow along from Mr Dietsch's questioning, as a northerner, I must say—I have said this before in these hearings when this little matter has come up—that we do not have enough conservation officers in this province, but having said that, we need a lot more occupational health and safety inspectors.

I would just like to put on the record that as of 1 February 1990 there were 158 industrial health inspectors, 92 on-the-job construction inspectors and 14 being recruited, for a total of 106. There were 24 mining inspectors, with three openings, and 10 active field engineers, with two openings, for a total of 24 on-the-job and 39 total, if they were all filled. So the total as of 1 February 1990 was 303. Conservation officers: there are 251 full-time COs in this province, slightly less than the total number of inspectors, but there are also 499 deputy conservation officers in this province who work part-time as conservation officers, for a total of 750 looking after fish and wildlife, full-time and part-time, in this province, and a total of 303 looking after occupational health and safety.

I truly believe we need more conservation officers, but these figures, 750 for conservation and 303 for inspectors, certainly show the commitment of this government to occupational health and safety in the province.

I would just like to ask about one other matter. Since you did not deal with it directly in your brief you may not want to comment, in which case, fine, just say so. One of the things we found rather intriguing in the hearings, as we have gone around the province, is that management groups have on a number of occasions expressed their concern for the unorganized worker and how they want the unorganized worker to be properly represented in the agency, not just organized labour.

As someone who is experienced in the labour movement—you have probably had some experience in organizing—can you explain why they suddenly have this serious concern on the part of

management for the unorganized worker in this province?

Mr Ducharme: I have no idea because they never, ever have before and I do not know why they have become so concerned now.

Mr Wildman: I am trying to fathom it myself.

Mr Ducharme: Maybe you can tell me.

The Chair: Mr Ducharme, thank you very much for your presentation to the committee. We have enjoyed the exchanges with you very much.

The next presentation is from the Ontario Public Service Employees Union, Local 136, Mr Benard, Mr Hyland, Mr Lowell—I think I got one of the names wrong but I am sure you will correct me. We welcome you to the committee and if you will introduce your group we are in your hands for half an hour.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 136

Mr Lowell: My name is Mark Lowell, I am an ambulance officer and chairperson for the ambulance division of OPSEU. With me today are Joe Benard, an ambulance officer and executive board member of OPSEU. On the other side is Andy Robert, who is also an ambulance officer and he is the president of OPSEU, Local 136, in Windsor. Also with us at the table today is Bob DeMatteo, who is a health and safety representative from OPSEU.

The Chair: We have talked to Mr DeMatteo before. Whenever you are ready.

Mr Lowell: We want to tell you why Bill 208 needs overhauling. We need the right to refuse unsafe work, why inspection has to be beefed up and why the province has to enforce health and safety rules. You know that ambulance crews protect public health and save people's lives, so it is ironic that many of us get very ill because of our work. Too many of us have been severely injured and have even died as a result of our duties as ambulance officers. The public we are there to protect, the general public, have been injured and they also have died.

Listen to these shocking statistics:

In the Ministry of Health ambulance service alone, there have been 1,593 accidents between 1980 and 1988. That is over 1,500 ambulance accidents, an increase of 54 per cent over those nine years. During the same period of time my fellow officers filed 114 disease claims, an increase of 800 per cent in nine years. That is for illness caused by our work.

1530

In the last 12 months, I lost three fellow ambulance officers in air crashes. Those same crashes killed flight crew and, yes, members of the public as well.

Let me tell you what happened in Chapleau. That is the air ambulance crash where ambulance officers Ian Harris and Don Contant lost their lives. Ian had raised the issue of the safety of those planes and he worried about the flight readiness of the pilot as well. If he had been listened to, or more to the point if he had the right to refuse work until the aircraft was airworthy and the pilot properly trained, I would not be standing here today using his death and the death of the aircrew as a sad example of what is wrong with Bill 208.

We are not malingering when we say we need the right to refuse. We are not lazy. We are not trying to be political. We are not trying to rip off the taxpayer or eat into the profits of our employer. We just do not like to die unnecessarily and we do not like to see our colleagues die. And we certainly do not like to see members of the public die.

Mr Benard: Let me tell you about another tragedy, the fatal Pelee Island crash. One of my colleagues, Russell Ransome, died as a result of that accident.

Here is how the coroner's jury described what happened. The plane left Pelee Island airport, got airborne, then went down in the water. Four out of the five people on board managed to get out of the aircraft. Two people out of those four drowned. The fifth person, because of his heroic efforts, never got out of the aircraft and drowned. It is clear from the jury's recommendations that Russ Ransome, ambulance officer, the aircrew and the civilians in that plane did not have to die.

The deaths were preventable.

We have included the jury's recommendation in our brief for your information. It is a long list of requirements that include the provision of floating devices and air emergency training, a requirement that the Ontario Public Service Employees Union has consistently demanded, requirements that are not in place now. If they had been in place, Russ Ransome would be alive today and so would the people flying with him.

It is because of situations like the Point Pelee crash that we say if conditions are unsafe, we must have the right to refuse work. We must have better inspection, and inspection with power to make safety improvements, and we must have the backup of government enforcement.

If the province does not enforce safety regulations, then more of my colleagues, more aircrew and more of the public will die.

Mr Robert: The danger to air ambulance pilots, officers, crew and passengers continues. In early January there was another air ambulance crash in Sioux Lookout, except management did not call it a crash; they described it as a hard landing. Well, this hard landing destroyed the airplane.

The crash took place at a time of high pilot turnover. The co-pilot was new and in our view the accident was caused by pilot error. The company running the service tried to keep it hush-hush. They wanted to make it look like an incident and not an accident. They ordered the officers not to talk to anyone about what happened and they reported it as a hard landing and nothing more. That was so there would be no Department of Transport investigation. There should have been an investigation.

Air ambulance officers and their patients are not the only ones at risk. Our road ambulance colleagues face real danger also.

I am sure you remember the infamous Mississauga train derailment which happened 10 years ago. Thousands of residents were evacuated because of the threat of exposure to deadly chlorine gas. Our units were dispatched to provide emergency care at the site of the derailment.

Even though the whole area was contaminated with chlorine gas, our ambulance officers were not provided with self-contained breathing apparatus and many of us were not even trained to use them if they were available. It is hard to believe but 10 years have gone by and neither this equipment nor the necessary training is available to cope with such disasters, yet the threat of this kind of event happening again is ever present. In the past five months a derailment occurred in Mississauga again and a second one just occurred in Burlington, right behind the ambulance base.

The dangers in our work are many. The risk of contracting infectious disease from handling infectious patients and material is always hanging over us.

Recently, for example, some officers were dispatched to pick up a patient whose symptoms indicated that he might be suffering from meningitis. The patient's family doctor and our operator advised us that there was no such threat and to treat the call as a normal transfer. But when the officers arrived at the hospital, they were advised by staff that the doctor had alerted them that the patient might have meningitis. That situation put the ambulance officers at great risk because meningitis can be contracted through the air.

Some ambulance services require us to keep inventory of linen. We have to sort linen which has been contaminated with patients' blood and body fluids by hand. That is a practice which increases our risk of infection.

For the most part, our ambulances are converted standard vans which are not originally designed as emergency medical vehicles. To be cost effective, some of these are rigged to accommodate two patients. Consequently, equipment cannot be secured safely and officers cannot be strapped in with a seatbelt in the patient compartment.

A few years ago, some officers refused to use this type of unit because they thought they had the right to protect themselves until this was properly investigated. They were suspended on the spot and two other officers were ordered to drive that ambulance. They were told that their refusal would endanger lives of patients and therefore they did not have the right to refuse. Not only was this not true but we were later advised that the Ministry of Labour had ordered this kind of unit out of service in London, Ontario, a few weeks earlier.

Our efforts to have these and many other concerns addressed are frustrated at every turn. We raise these issues at joint committee meetings and get scolded for intruding on their right to manage or that there is not enough money in the budget or that they are looking into it. The employer representatives just follow instructions to stonewall or the joint recommendations get sent back for further study.

Labour inspectors try to move things ahead but cannot write orders because there are no regulations that legally apply to health care facilities. Their orders will not stick in court.

Get frustrated enough to exercise what you think is your right to refuse and you will get suspended. It may not stick legally but all they have to do is suspend one worker and everyone gets the message.

And so you are back to square one. The only time we seem to make any headway is when we are on legal strike or when we can show that our condition also is endangering the public.

Mr Lowell: We want to point out to this committee the inadequacies of the present Occupational Health and Safety Act and the deficiencies of Bill 208 which will amend that legislation. The present health and safety legislation does not protect ambulance officers whether they are land-based or air paramedics.

The right to refuse: ambulance officers are restricted in their right to refuse unsafe work. The

act specifically denies this basic right of self-defence to ambulance officers if the health and safety of patients in their care is in imminent jeopardy. The restriction of the right to refuse unsafe work has allowed many unsafe and unhealthy work situations to go uncorrected, thereby putting ambulance officers and the public at unnecessary risk.

Workers who are allowed to exercise an unconditional right to refuse can expect an immediate resolution to a hazardous situation by their supervisor or can continue to refuse if the problem cannot be satisfactorily resolved. This element does not exist in most ambulance workplaces because many employers will invoke the imminent jeopardy restriction on the right to refuse. Workers accept this ruling and continue to work with a health and safety problem still unresolved.

The second stage of refusal is never resolved and an inspector does not attend to investigate and make a ruling.

Ambulance workplaces are many times not on regularly scheduled inspection tours by the Ministry of Labour inspectors which further diminishes the Ministry of Labour presence in these workplaces.

The presence of the Ministry of Labour inspector in workplaces has been called an important element in the successful resolution of health and safety problems by joint health and safety committees according to a report to the Minister of Labour by his own advisory council.

Mr Benard: We see the problem of unresolved health and safety hazards is compounded by the workers being restricted from exercising their right to refuse in certain circumstances.

An actual incident will make clear the problems created by the point I have just made. An ambulance officer reported that the worn tires on his vehicle were a safety hazard and should be replaced before putting this ambulance back in service.

When the officer mentioned his right to refuse in this instance, the employer maintained that if the vehicle were withdrawn from service some person could be put in imminent jeopardy in the next call because this was the only vehicle available.

The officer accepted the argument, withdrew the complaint and used the vehicle for the next call. Traffic police following the ambulance pulled it over because the tires were bald and declared it an unsafe vehicle and a hazard to public safety.

It should be obvious that the situation should have been handled at the base before the vehicle was put on the road. Surely an ambulance officer who inspects his vehicle and makes a professional evaluation pointing out the health and safety hazard could be entrusted with an unconditional right to refuse.

The restriction that is supposed to protect the life, health and safety of the patient, or the public in this case, actually contributed to a hazardous situation which it was designed to prevent. Bill 208 does nothing to remove the restriction on ambulance officers to refuse unsafe work.

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Inspections of the workplace: Speed of response and quality of assistance are essential for ambulance officers. Speed and quality are directly affected by the equipment available to the service. The types of equipment include the vehicles themselves and all devices needed in emergency health care, from compressed gas cylinders to splints and stretchers. In order to maintain this equipment and ensure that it is safe and available for immediate use, it should be inspected on a regular basis.

Bill 208 proposes that inspection be not more than once per month and the entire workplace be inspected in total only once a year. We cannot support this amendment. Full regular inspections of the workplace every month are required to ensure that life-saving equipment is in optimum working condition.

How would you like to ride in an ambulance where the side doors will not close? I am not making this up. The situation actually occurred recently. An ambulance officer was ordered to take his vehicle out on a run, even though the side doors of the ambulance would not stay closed. His protests were futile. Let me tell you, it was not his life that was in danger; it was that of the patient. But people do not seem to understand that we are absolutely sincere when we say we need the right to refuse in order to protect the public.

Mr Robert: Joint health and safety committees: Joint health and safety committees are merely advisory committees whose recommendations to resolve health and safety problems are largely ignored by management. The right to stop work by a certified member of the committee would encourage this committee to make real contributions to health and safety. But Bill 208 will restrict the right to stop work in the case of ambulance officers. Waiting 30 days to receive our employer's negative reply is not an improvement.

Enforcement: The Ministry of Labour inspectors are not called often to attend investigations of work refusals in ambulance workplaces because the right to refuse is rarely exercised. When inspectors are called to investigate a complaint, they are often loathe to write orders because it cannot be shown that a regulation has been broken.

It must be pointed out to the committee that there are no regulations so far for health care workers, including ambulance officers. The Ministry of Labour decided to ignore a set of proposed regulations for health care workers, developed after four years of discussion by a bipartite committee. This was the result of pressure from the Ministry of Health and the Ontario Hospital Association.

Not only will inspectors continue to refuse to write orders, but employers will continue to use the lack of regulations for health care workers as an excuse for not addressing our concerns about threats to the health and safety to the public and ourselves. Bill 208 does not change this situation. The scope of inspectors' powers has not been broadened. They are still not obliged to issue orders. Their power to issue sanctions is still limited to the slow and costly process of prosecutions.

Work assigned to another worker after a job refusal: The present legislation allows the worker to assign another worker to do a job that has been refused by a worker. Even though the circumstances of the original refusal must be communicated to another worker who is assigned, we believe that in the present climate, where the right to refuse is rarely exercised by ambulance officers, the new officer may be intimidated or may be unfamiliar with the safety or health problem and agree to do the work. The unsafe condition may go unresolved and in fact may ultimately put the public and that officer in danger.

We agree with the OFL's proposed amendment to Bill 208 that states where a worker has refused an unsafe job, no other worker should be assigned until the refusal is investigated and resolved.

Right to refuse is weakened: Bill 208 weakens the right to refuse because the worker gets paid only during the employers' investigation. Payment stops if a worker continues to refuse thereafter. This in effect takes the right to refuse away from all workers.

Mr Lowell: Conclusion: We want there to be no doubt in your mind what we need and what we

want in Ontario's occupational health and safety laws.

All exemptions from and any restrictions to the right to refuse and the right to shut down unsafe work must be removed from the Occupational Health and Safety Act and from Bill 208.

Subsections 23(1) and (2) must be repealed.

Subsection 23(11) must be repealed and amended so that the employer be forbidden to assign refused work to another worker before the safety issue is resolved.

All workers must have the right to a joint committee. Joint committees should be made more effective by providing worker members of the committee the power to issue provisional improvement notices.

Bill 208 must provide full pay during all stages of work refusal and stop-work orders. The section on 100 per cent pay must be deleted and subsection 23(10) of the act amended to guarantee payment to all stages of refusal.

Section 29 of the act must be amended to oblige inspectors to issue orders and sanctions whenever a violation of the act occurs. Further amendment must provide inspectors with the power to issue immediate civil penalties in the form of fines whenever a violation occurs.

If Ontario's residents are to enjoy the protection of a first-class ambulance service, we must ensure that ambulance workers who deliver this essential service are given rights in occupational health and safety legislation. They must be allowed to protect their health, their safety, their lives and, most important, the lives of the public.

We ask the committee to recommend the improvements we have suggested to the Occupational Health and Safety Act. We ask you to do this in the names of Russ Ransome, Ian Harris and Don Contant. We could add more names to that list, the names of ordinary citizens who died along with them, but I am sure that at this point you get our point.

The Vice-Chair: Thank you for a very good brief. We will start with questions from Bud Wildman.

Mr Wildman: In regard to the accident you referred to in Chapeau, as you indicated, a couple of weeks prior to that accident the officer had expressed concern about the condition and the airworthiness of the aircraft and expressed concern about the possibility of an accident. I am trying to put this as carefully as possible.

How do you respond to an employer, the government of Ontario, that entrusts to you the safety and the health of the public, of critically ill or injured patients, gives you that kind of

responsibility but does not believe that you are responsible enough yourselves to judiciously, fairly and responsibly exercise a right to refuse unsafe work to protect yourself as well as the people who are in your care?

Mr Lowell: Speaking directly to the situation in Chapleau, I was very aware of the situation. Ian Harris and I were actually close friends and used to be workmates prior to his going to Chapleau. He felt that the way the government was doing business by contracting out to pilots, allowing general pilot change and a complete change of air carriers, was going to bring in new pilots with no familiarity with the neighbourhood they were flying in.

Ian was a licensed private pilot in his own right and he voiced his concerns at the Legislature. He voiced his concerns to management. He voiced his concerns to myself as the provincial chair and to the president of our union.

The takeover was actually supposed to be a couple of days later. As it turned out, it took place at seven o'clock in the evening, the night of the crash. Ian came into work expecting to be flying with his standard pilot and flight crew and found out that it was not that crew; it was the new crew and new plane.

He was faced with a simple decision: "Do I get in the plane even though I don't feel that this is the right thing to do, that this is a safe thing to do, or do I refuse to get into the plane and lose my job?" That was the simple fact of the decision he was faced with. He got into the plane.

To say that there was imminent jeopardy, possibly there was not. As it turned out, there certainly was. It was tragedy. But to have the ability to say, "No, my life is definitely in danger," we do not have to walk into a situation with somebody shooting at us or where there is a toxic chemical spill that we know about because then there is imminent danger to ourselves. But just because you suspect things are not right and something could happen, our employer, this provincial government, the Minister of Health says: "You do your job. You are being paid to do a job. You get in the plane and you do the job."

That is a tragic example of the inadequacies of the system. I think Ian was well qualified, more qualified than most, to make the decision that he made that this was not a good idea. But even with all that knowledge, he still had to get into the plane.

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Mr DeMatteo: If I may add just one point, I think that proposition is both absurd and self-serving. I would suggest to you that what the

government of Ontario is doing with respect to these restrictions on its own employees is essentially denying them the right of self-protection that is given to all other employees, but is at the same time using this and abusing this restriction not to deal with the problems that its employees face and to ignore those problems. I think it is being abused. If anyone wants to talk about people abusing their rights, I think what has happened here, what this illustrates is the fact that the employers are abusing these restrictions.

Mr Wildman: Just one other question perhaps coming from that, and the Point Pelee case is another example, could you expand on what this does to the morale of your members, to be viewed this way by your employer, the provincial government?

Mr Lowell: In relationship to the Pelee crash, locally they have come to terms. They are trying wherever possible not to use ambulance attendants any more because ambulance attendants tend to ask too many questions. But in actual fact, in the reality of the law, if an ambulance attendant is called while we are sitting here to go to the Windsor airport, to get into a plane under the same circumstances, asking all the right questions, getting all the wrong answers, he still has to get on the plane or face losing his job.

Mr Wildman: So your morale is—

Mr Lowell: So the morale is terrible. When you are working, you are hoping you are not going to get put into this situation. Consequently, recently the government, through an arbitrator, has chosen to award a pay raise to the air ambulance attendants because of the recruitment retention problem. Even our regular dedicated aircraft attendants are not staying on the job.

Mr Carrothers: I just want to go back. On page 17 of your brief you talk about an ambulance that was on the road with bald tires and got pulled over by the traffic police. I wondered what ultimately happened there. The policeman would have had the right, obviously, to take the vehicle right off the road for traffic safety. What did happen there?

Mr Lowell: What happened there is it left us without a real concrete paper trail because of a good working relationship between your average police officer, the constable on the road and the ambulance officers who are on the street as well doing the job. It was suggested to the officer that at the completion of this call they would take the ambulance off the road, and a friendly word was, "If you have any problem doing that, contact me and we'll look into it." So as it turned out, after

the call was over the ambulance was taken off the road, and after the fact the problem was resolved that way. But the problem should have been resolved before the ambulance left the garage in the first place.

Mr Carrothers: They let it go with nothing else they could do in the circumstances. What kind of inspections are done then? What you are talking about is there is the motor vehicle act and the roadworthiness of a vehicle. We are now stepping right outside health and safety law. I mean, there are pretty definite rules around that.

Mr Lowell: As far as whether the vehicle should be on the road as far as the Department of Transport is concerned, our vehicles are safety checked.

Mr Carrothers: How often?

Mr Lowell: But if in the process of your day-to-day vehicle checks you notice a deficiency and you point that deficiency out, that vehicle should be taken off line until the deficiency is corrected. That would not be us abusing our authority. All that would be is us being able to exercise common sense.

Mr Carrothers: I understand what you are saying. I think it is a reasonable—

Mr Lowell: Right now the employer would say, “We don’t want a down staff, we don’t want this or we don’t want that or we don’t have a vehicle to back it up. Just get in it and drive it. We’ll look after it,” and that is the way it works.

Mr Carrothers: I understand what you are saying and I guess I am curious how often the inspections happen and so on. The motor vehicle act—

Mr Lowell: The motor vehicle act I believe is an annual—

Mr Carrothers: An annual thing.

Mr Lowell: We do ABC maintenance and an annual motor vehicle DOT check in the service that I work in.

Mr Fleet: This committee has had evidence before it of the problems of air safety for circumstances as you have described, and I think we probably got more detail today. But one thing that has not been touched on at all, and I am going to ask about it just because I want to get an understanding of your view of how this ties in, is the federal jurisdiction that normally applies in any airplane situation.

The ordinary situation for any airplane, for any aspect of the equipment or the pilot, is absolutely determined by federal regulation. It is my general impression that that is something they pay close

attention to in the ordinary course and that any time there is a crash of any sort it is a matter of exhaustive investigation and they go to great lengths to try to determine the causes of any crash. Given that ordinary scenario, how do you perceive that the responsibility of regulation at the federal level ties in to the functions that your members carry out in the course of their jobs?

Mr Lowell: To say that the DOT covers all aspects and looks after all the problems, as was mentioned, is an after-the-fact situation. The DOT does not require lifejackets on flights from Windsor airport to Pelee Island. They still today do not require lifejackets. People drowned because of a air crash between here and Pelee Island. They did not die from injuries, they drowned in the water. So it is falling short, and we attend inquests and we get recommendations. They do not necessarily get implemented. There is no pressure on the DOT to implement them.

Mr Fleet: But is there any relationship at all between the problems your members encounter and the things you have related to the safety process that they have at the federal level? I guess my assumption, subject to what you have to tell me, is that you would be making regular representations to the federal people quite apart from the issue of your job. But just because the person who owns the airplane, the person who flies the airplane, has obligations for safety and there is a general level of expertise that is at the federal level, that is their business to regulate that stuff. Are you not involved intensively at that level?

Mr Lowell: I will hand it over. As a paying passenger maybe, but it is my workplace, in the case of an air ambulance attendant.

Mr Fleet: Is there no interaction at all? I am surprised, if that is the case.

Mr DeMatteo: We certainly wish there would be, but bear in mind that despite the fact that there is a crossover in jurisdiction with respect to air safety, the employer is not relieved of the responsibility for the health and safety of his employees. Bear in mind also that these same employees have raised these questions about the air safety and worthiness of these planes that they are to fly in innumerable times. It would seem to me a moral and also a legal responsibility on the part of that employer, despite the jurisdictions, to take those concerns seriously and look into the matter. Maybe they have to go beyond what DOT requires, but that is what they should be doing.

The thing is, if you look at what has happened in these crashes, if you look at the coroner’s

inquest reports and the recommendations of the jury in the Pelee crash, it recommended that flotation devices be available for the people who are flying on that plane and that they be trained in air emergency procedures, things which have not been done and are still not done today and which contributed to the death of Russell Ransome and, I might add, a member of the flight crew and a member of the public. It does not wash that because we have some crossed lines in jurisdiction, the Ministry of Health or any employer in this province is off the hook. It just does not wash at all.

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Mr Fleet: I have not suggested that they are off the hook. I do not want to be unfair to you. I do not think I have yet heard an answer to my question. I am trying to find out what steps are taking place at the federal level and what the level of interaction has been. I appreciate your telling me you want the employer to address certain things, I understand that, but I would have thought that your union would be making vigorous representations on an ongoing basis, just as a matter of routine, and that the federal government would be making some kinds of responses. It would just help me to better understand the situation if I knew what that was.

Mr DeMatteo: I will tell you this. It has taken a coroner's inquest and it has taken the death of a person, several persons, to finally bring that to roost, because one of the coroner's recommendations was that they should be having that consultation between the air carriers, between the Ministry of Health and the Department of Transport, in terms of what goes on in those planes. That has come too late, and hopefully that kind of recommendation to go forward will be implemented and may lead to an improvement in the conditions.

The Chair: One final and short question from Mr Mackenzie.

Mr Mackenzie: In fact, though, in the case that we have been discussing, the pilot who lost his life had flagged the problem prior to the accident, had he not, the ambulance attendant in Chapeau?

Mr Lowell: In Chapeau, Ian Harris had brought the problem to the forefront well in advance of the takeover. They moved the takeover time up, but there were no plans to change the government's direction or the employer's direction.

Mr Mackenzie: Right down to Queen's Park too, as I recall.

Mr Lowell: He was at Queen's Park. I was there, and he spoke with MPPs from all parties.

Mr Mackenzie: At this time also you have just gone through four years to change the direction slightly of talks on proposed regulations for health care workers. Part of that enters into the whole working conditions in the safety and health field as well, does it not?

Mr DeMatteo: That is correct, yes.

Mr Mackenzie: And after four years, that seems to have gone down the drain. I can recall some of the arguments in the House just recently when it happened.

Mr DeMatteo: That is correct. A consensus was achieved among a bipartite committee of labour and management, and that was undone by the Ministry of Health, which basically reneged on the original agreements that its representatives made, and by the Ontario Hospital Association, and the Minister of Labour had acceded to those demands. It was basically a minority group which had wrecked that process and we still do not have regulations which address health care workers throughout this province. There are over 200,000 workers in this province without regulations.

Mr Mackenzie: So after four years of efforts and with agreement reached, it has now gone down the drain and now you find in Bill 208 you also still are denied, the public sector workers, the full coverage of the legislation.

Mr DeMatteo: That is right. The thing is that we had great hopes when the government announced it was going to introduce reforms in occupational health and safety. Frankly, what we see in Bill 208 is window dressing. There is nothing in that legislation that we can really look at as making a significant contribution to the improvement of workers' occupational health in this province.

I will just take issue with another thing. It was stated before during some other questions that somehow there have been improvements in the inspectorate. The thing is, bear in mind there have not been outrageous increases in the inspectorate. In 1982 there were 292 inspectors. That went down to 207 inspectors, and after a great deal of public furore over what had been going on, the government finally started to increase the number of inspectors. But it is not nearly what is needed to deal with these problems and I suggest you take a look at what the staffing counts are, not what the complement counts are, because you are not at 306 people or 303 people. Our count on the number of inspectors in the

industrial branch is 137, not 158, and somebody else bandied another figure around. Anyway, you had better take a look at what the actual staffing counts are and how many vacancies there are that they are dragging their feet in filling.

Mr Mackenzie: So apart from the information we got, you are actually representing these people so you would have some idea.

Mr DeMatteo: We represent the inspectors.

The Chair: I wish we had more time but we really do not, so we must move on, but thank you very much for your presentation.

The next presentation is from the H. J. Heinz Company. Mr Cobby and Mr Drummond, if you will tell us who is who, we can proceed.

H. J. HEINZ CO OF CANADA

Mr Cobby: I would like to begin by saying thank you for the opportunity to address the committee. I have certainly found this to be a very enlightening day.

We are representing the H. J. Heinz Co of Canada. I am Donald Cobby. I am the manager, industrial relations and personnel services, and my colleague is Arlo Drummond. He is our loss control manager, whose job it is to spearhead our health and safety policies and programs.

Before I begin, I would like to point out that the concerns that we will be showing here are just that; these are suggestions for you to take back when making your recommendations, and we do not want them to be seen as demands. They are simply concerns that we have at reviewing Bill 208.

The H. J. Heinz Co is a wholly owned subsidiary of the H. J. Heinz Co situated in Pittsburgh, Pennsylvania. We have sales of \$350 million annually, with an employment level of approximately 1,400 persons at our only Canadian plant, which is in Leamington. We have an additional 200 sales and marketing persons in our head office in Toronto, and currently we have a little over 600 products that we put out of our plant, including ketchup, pickles, baby food, pasta, tomato juice, beans and various table condiments. In short, all the Heinz products you see on the shelf in Canada come from our plant, at least for the time being. To give you an idea of the size of our plant, in 1989 we contracted 220,000 tons of tomatoes for processing.

Heinz is committed to providing a safe work environment for all its employees, and certainly supports the philosophy inherent in Bill 208. We certainly agree that education and training are important for our goal of trying to attain zero lost-time injuries. We also support the direction

of the suggested revisions put forth by the minister. However, we feel that perhaps some refinement should be considered. Our presentation will address some of these concerns: (1) stop-work; (2) health and safety agency; (3) certification; (4) right to refuse work; (5) officer or director liability.

1. Stop work: In its current form we are opposed to the stop-work provisions, and I will break that out a little bit more further on in this particular section, but to date we have experienced relative success in a joint discussion and resolution approach to workplace safety. Unilaterally allowing one employee the power to shut down a process would only serve to erode this relationship whereby one of the primary stakeholders is excluded from the decision-making process. This would counter the sustenance of the existing health and safety act in Ontario, which embraces the need for joint accountability.

The alternative put forth by the minister to delineate acceptable and unacceptable employers: We certainly feel that this is a laudable point; however, it may have some faults, and the development of criteria may lend itself to subjective opinions. In addition to that, one of the suggestions about the monitoring of workplaces of unacceptable employers would mean an untenable workload on the current numbers of Ministry of Labour inspectors. After listening to some of the presentations today, certainly one of the points about having an MOL inspector on site is one of the things that sort of goes against the grain of any businessman. However, the idea may not be all that bad, because we recognize that some employers get the legislation they deserve—and we certainly hope that we do not fall into that category.

Heinz Canada believes, given our experience, the best approach to resolve workplace concerns is jointly. Under the current legislation, employees already have the right of work refusal if they feel their situation is hazardous. With our procedure we resolve the issues by involving the union health and safety rep, our loss control manager, the employee himself, the departmental safety representative, the supervisor, sometimes his supervisor, and at times we will also include the departmental steward.

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This approach seems to be the most viable, as it includes the individual who most closely works with the job and is experiencing the problem. We feel that it focuses on the partnership embodied in the act by co-operatively resolving the problem. We still support the idea of calling in an MOL

inspector when we come to an impasse and for advice on questions of technicality.

2. Health and safety agency: Really, our only concern here is that a significant portion of the labour force in Ontario is not represented. From our own perspective, it is not necessarily something that is going to impact upon us directly. However, we feel that if the bill is to reflect the interests of all the employees in Ontario, then the large portion of the workforce should also be represented in this agency.

We also suggest that consideration should be made in making the appointments to reflect the diverse composition of Ontario's economy, in respect to size of firm and type of industry, as examples.

We suggest that the term of office be specified within the bill, that perhaps a term of not longer than five years be considered, with the possibility of one renewal. In this way new or fresh ideas could be brought into the agency.

3. Certification: We certainly feel that the idea of certification has its merits, especially if training and education are going to be part of that process. It is something that we have been pushing within our own organization to drive down the costs of lost-time injuries, as I spelled out in the beginning. But there are certain questions that still have to be answered that we think should be considered. What will be the extent of the training and education? Will the certified personnel be required to take refresher courses? Will the training be industry specific? Will each shift have to be covered by a certified employee? Will the number of certified employees be contingent upon the size of the organization? How will it be determined who is to be certified? Those are just a few of the questions that have come to our mind.

Our greatest concern in giving certified personnel the authority to shut down a process is the abuse of such authority, and certainly you have heard that a number of times today already. Industry everywhere would not be able to survive without having responsible employees. What we are saying here is that we recognize that in order for an organization to be successful, you must have good, responsible employees, and we certainly think that the majority of our employees fall into that category. But we cannot be naïve in thinking that there are not some individuals out there who may be tempted to abuse such authority. It may not be outright abuse, as some may define "abuse," but there are times when people make mistakes. This is an imperfect world. Some people may be misguided in their

judgements or just may be the type of individuals who make improper judgements.

The current labour climate within our own company is exceptionally good. We have a good method of resolving problems in that we can take problems to our union or our employees and they can bring problems to us and we resolve them.

Our concern about the abuse of authority regarding these certified employees is that a couple of years ago we experienced a change in the union executive whereby we had a return—I guess I should not say a return—we had a situation where the new union executive had an adversarial approach to resolving issues. Quite frankly, that is a taste of something that we really do not want to experience again. We are back with the previous union organization, union executive that we had, and it is much more open on discussion of problems.

4. The right to refuse work: Heinz Canada supports the alternative position suggested by the minister, which makes clearer the definition of "unsafe work" to include immediate danger. The legislation should include a specification allowing employers the right to reassign workers to other jobs. I cannot speak for other organizations, but certainly within our organization, if we do have a work refusal, which quite frankly have been few and far between, we will continue payment of that individual even though he is not working, and we feel that we should have the right to assign him to other work until such time as the problem can be resolved. That is not to say that we would just arbitrarily reassign that individual. It would be in conjunction with discussion with the union rep.

To protect an employer from abuse of exercising the right of refusal by dissatisfied workers, some means of taking disciplinary action should also be incorporated.

5. Officer-director liability: This sort of follows the above. If there is shared responsibility, then we feel that there should be a balance of the liability as well. The shared responsibility is what is being touted in the original form of the bill.

In conclusion, we certainly support the goal of providing a safe work environment. We are fully cognizant of the human and economic gains of having a safe work environment. We have been working diligently to improve our injury rate and this has met with some success. In our fiscal year to date, compared to last year, we have had a reduction of 33 per cent in our lost-time injury rate as well as a 23 per cent decrease in our medical aid rate.

I think it is a good reflection that while statistics are showing that the industry rate is going up, we are in a downward trend, but we still have a long way to go and we are the first to admit that. We have been working very closely with the Industrial Accident Prevention Association, and through conscious efforts to address these problems we are driving down our rate.

It became apparent to us through studies that we did within our own plant that approximately 53 per cent of the lost-time injuries were due to substandard work practices of our employees. This is not to say that we were pointing fingers at our employees. As a matter of fact, we accepted the fact that it was, in part, our responsibility to ensure that they did not have substandard work practices. It was a major thing on our part to take the step to ensure that our employees were properly trained and educated.

Recently, the entire Heinz organization began an education process gearing us to doing things right the first time. In embracing this philosophy to cut the costs of nonconformity to standards, we are applying this simple approach to every process in the organization, including safety. It is our opinion that the act should encourage organizations to follow the same tack through education and training; in other words, make sure that the unsafe situation is not there in the first place.

To emphasize the previously stated point, we have been fostering a co-operative approach to problem-solving at our Leamington facility, and this legislation, in our opinion, works against that principle.

In making your final recommendations, we ask that you consider the fact that there are two groups of people involved: labour and management. Both have a significant stake in the operation and therefore all should be treated equitably in considering new legislation.

One final point I would like to make is that throughout the day we have sat here and listened to quite a diversity in the presentations that you have had before you. We can certainly understand the committee's task to come up with recommendations that are fair to all, and, quite frankly, good luck.

1620

The Chair: Thank you, Mr Cobby. I just have one brief question. On the second to last page of your brief you state: "Our parent company is already positioning itself to make a decision on where to produce its products. Any added burden to our cost structure will only serve to make their decision less beneficial to ourselves."

Are you hinting there—it is a pretty strong hint, I think—that increased costs attached to health and safety would actually make a company like Heinz locate elsewhere?

Mr Cobby: No. The point I am making is, as I say here, that our parent company is already positioning itself to make the decision on where to produce its products. In that examination it is looking at how much it costs the Heinz company in Canada, as an example, to make ketchup. They are supposedly very objectively going to look at it. "Can we produce it cheaper here or can we produce it cheaper in the United States?"

The only point we are making here—and the reason I did not verbalize this is because I do not want you to think that we are emphasizing the cost aspect of it. It is just something that should be brought to your attention that it is certainly something there. The added cost from our standpoint is not going to be that magnanimous—at least I hope not—in addressing any safety problems. So no, we are not saying that just straight costs added because of safety are going to drive the plant down to the south.

Mr Carrothers: I wonder if I could go to your comments, I guess in item 5 of your paper. It is not a numbered page but is about the officer-director liability. You are talking about some sort of balanced approach here, which I wanted to get you to expand on.

The point, I think, of the provisions that have been put in the legislation is an attempt to create, for lack of a better word, a corporate culture that treats safety as a very high priority. One way to do that is to make sure that senior management, the people at the top, the board of directors, have some direct responsibility in that area. We so often seem to find a situation where it is the line manager or someone who gets caught in the squeeze and perhaps is claimed to be the one responsible, and the lines of responsibility do not extend above that.

From my point of view, having been a director of a company and understanding that I used to have a little checklist beside me, knowing what I would be personally responsible for and making sure that they were taken care of—not that I was neglecting other things, but I did want to make sure those things were taken care of. I am wondering how you would balance that. I am just not sure what you mean by "balanced approach." We are talking about the board of directors acting for the shareholders, responsible for the company to the shareholders. How do you balance that or bring employees into that mix?

Mr Cobby: I understand that what you are saying, if I can paraphrase, is that the ultimate responsibility lies at the top.

Mr Carrothers: Yes.

Mr Cobby: We are not saying that this is untrue. As a matter of fact, we have found from our own experiences that in order to have safety made a priority issue within the company, we need that commitment from our CEO. As far as the balanced approach to that is concerned, we also feel that there is a share in the responsibility of maintaining that safe work environment.

Mr Carrothers: What additional legal liability could one create? I understand what you are saying. As a matter of fact, that seems to be a common theme when we start talking about workplaces where safety is important. It is a shared responsibility and everybody gets down and works together and solves the problem, but that is not the result of a legal liability. Since you have put it in a section that talks about officers' and directors' liability and talks about a balanced approach, I am wondering what legal liability one could create to balance it out.

Mr Cobby: I guess that is one of those things that you as a committee would have to address.

Mr Carrothers: I had not thought of addressing it before you brought it up, which is why I was asking the question.

Mr Cobby: That is why we want to bring it up.

Mr Carrothers: Thank you.

Mr Mackenzie: I have two questions, one of them referring to the last page of your brief, once again. I would like to know what caused the Heinz company to increase its activities over the past year. Was there any specific purpose or reason? You comment that, "Recently, the entire Heinz organization began an education process gearing us to 'doing things right the first time'" around. What was it that led to this?

Mr Cobby: This is something that has come down from corporate headquarters, the CEO and executive director of the entire company, Tony O'Reilly out of Heinz world headquarters. Through studies it was found that a considerable amount of money was being wasted through poor management practices, up to the point of, I believe the statistics are, about 25 per cent of sales. In an effort to recoup that, it was felt that the way to do things was to do it right the first time. We have formally begun educating everyone from the top down, including my supervisor, his supervisor, who is the president of Heinz Canada, and so on, and all the subsidiaries across the Heinz family.

Mr Mackenzie: Was any of that to do with the assessment part of that cost or the rate of accidents—

Mr Cobby: No, that was something entirely separate. This is something that has come down from Heinz world headquarters. All subsidiaries are required to do include this education in their daily work.

Mr Mackenzie: On the previous page, the second question, when you are referring to your decrease in the lost-time injury rates, did I hear you say also that you had reduced your medical aid rate?

Mr Cobby: Yes.

Mr Mackenzie: That always rings a bell in my mind or bothers me because no lost-time accidents occur in most cases because the employers ask the workers to sit in the workplace without working and they are not reported to the WCB. That certainly distorts their rate and, I think, misinterprets, to say the least, some of the figures of the company.

Mr Cobby: I am sorry, but those are the figures that we have. As I say, we have been working very diligently in the last year to drive those costs down.

Mr Mackenzie: You have a fair number of medical aid cases in your situation.

Mr Cobby: A fair number—well, it depends on what you mean by "fair number."

Mr Mackenzie: The number that are not reported to the board, but are being kept at work even though they are unable to do the job.

Mr Cobby: All are reported.

Mr Mackenzie: Interesting.

Mr Drummond: I just want to assure Mr Mackenzie that we do report all of our injuries to the board, 100 per cent, and we do not keep anyone at work doing absolutely nothing in order to keep our statistics looking well.

Mr Mackenzie: I am pleased if that is the case because some of the testimony in some of the other areas indicates that it is fairly common practice, and it certainly does distort the WCB rates.

Mr Drummond: I assure you that at our place it is not that way.

Mr Riddell: I am sure when the former minister drafted his bill he heard many of the same concerns that we are hearing travelling around the province and that is that the right to refuse does not come without intimidation, peer pressure, temporary suspension, dismissal, you name it, and that it is very easy for management

to go down the line and get somebody who is willing to step into an unsafe workplace, if indeed the former worker refused to work there.

Now if you are asking the committee to abandon the stop-work section of this bill, what recommendations would you have for the committee as to how we could strengthen the right-to-refuse section of the bill whereby the workers would not feel that there is going to be some kind of retaliation, whether it be, as I say, possible temporary suspensions or dismissals or whatever management may have to intimidate that worker? How could we strengthen it whereby an employer cannot move down the line and get some other employee to step into that job? If you are asking us to abandon stop-work, give us some recommendations as to how we strengthen the right to refuse so that the workers do feel they have some protection.

Mr Cobby: I do not feel we are asking for the stop-work provision to be abandoned. As a matter of fact, that is why we have stated that in the worst of worst case scenarios some companies get what they deserve. We feel it is something perhaps that should be in there, but what we feel is that unilaterally having one individual in a position to shut down a process is something that we feel should be questioned.

I do not know if this is going to answer your question or not, but as far as we feel as a company, the joint approach to shutting down a process is the best approach and that includes the right to refuse work. I guess the best way to answer it is, given our own circumstances, if an individual does refuse to do a job because he feels it is unsafe, it is investigated jointly by the loss-control manager, as well as the union safety rep, and as I stated before, the employee, the supervisors involved, the departmental safety reps and the departmental stewards. I think that should kind of ensure not anyone just coming along and taking a person off the job and getting one some place else.

Mr Riddell: I guess what we have been hearing, though, is that this does not come without its costs. In other words, the right to refuse is not used to the extent that it might be used because of fear of intimidation or whatever. I guess that is the reason the stop-work was put in there in the first place. I just wanted to get your opinions on it.

The Chair: Gentlemen, thank you for your presentation this afternoon. We appreciate it.

Mr Mackenzie: Mr Chairman, before we proceed with the next witness, can—

The Chair: Could I perhaps call them to the table and then we can—

Mr Mackenzie: You can call them to the table.

The Chair: Okay.

Mr Mackenzie: I just want to request something from our staff.

The Chair: The Windsor and District CUPE Council is next. Mr Mackenzie.

1630

Mr Mackenzie: We had a comment recently, when one of the previous witnesses was before us, from my colleague Mr Dietsch as to the accuracy of comments about the Gerber fatality and the results leading up to it. I wonder if the staff could pull out the Hansard and the actual testimony by the chap who himself was involved in that case and have it for us maybe for the next meeting next week. It is not as was stated from my information.

The Chair: I am sorry. I am a little confused what Hansard you are looking for. Today's?

Mr Mackenzie: The record of the testimony in St Catharines before this committee.

The Chair: St Catharines?

Mr Mackenzie: Yes.

Mr Fleet: I would like to address this point. I know that in the brief that we received from the union, and I believe it was while we were in St Catharines, the union material included extensive documentation relating to that inquest and press reports, and the whole set of suggestions and allegations and recommendations, really quite an extensive background. I remember reading through it and thinking it was quite comprehensive and actually more useful in terms of understanding all of it, because you had a greater chance to get more information that would merely be provided by the transcript. It would be more useful, I think, if all members simply referred to that brief.

Mrs Marland: Is it that one?

Mr Fleet: It is a big thick one. It is not that I want to discourage any member from presenting his view of what is in there, but in fact I thought it was more useful than just the evidence. If somebody wants to go and look at the transcript too, that may be, but it was all that background information that I found quite helpful. It does reveal that there are a lot of different factors. I could see somebody taking a view with regard to why that happened and what one ought to do about it.

The Chair: We do have the brief, so that is not a problem.

Mr Mackenzie: It has nothing to do with my view of what I think it says or what is in all that evidence. I just want to get to the facts in terms of what happened when that worker refused to do the job.

Mr Fleet: It is in the brief.

Mr Dietsch: We should be looking at the inquest, not the brief.

Mr Fleet: There is inquest documentation in the brief.

Mr Dietsch: That is right.

The Chair: We have that brief and we can refer to it at any time. I think we should move on with the presentation from CUPE. Gentlemen and lady, if you will introduce yourselves we can proceed for the next 30 minutes.

CANADIAN UNION OF PUBLIC EMPLOYEES

WINDSOR AND DISTRICT COUNCIL AND CUPE LOCALS 543 AND 82

Mr Murphy: We represent the Canadian Union of Public Employees council. We represent approximately 3,000 employees, the composition of which is municipal outside and inside workers, health care employees in a variety of institutions, board of education employees, Essex county metro health unit employees, day care workers, WOSH employees and employees of the library board.

I have been extensively involved in health and safety since 1977 and because of this have had an opportunity to understand the intent of the original act, struggled with it for 10 years and fully understand the inadequacies from an employee's point of view. In 1982, I was a member of the ad hoc committee which produced a report, *Not Yet Healthy, Not Yet Safe*, and presented subsequent briefs. I was directly involved in the evaluation of the proposed bill that is before you now.

I am the health and safety representative and also health and safety co-ordinator for CUPE Local 82 and an occupational health and safety instructor, level 1 and level 2. I am also a workplace hazardous materials information system co-ordinator and a certified instructor trainer and hold numerous certificates in occupational health and safety. In these capacities I have had the opportunity to instruct throughout the province of Ontario.

Mr McKinney: My name is Kendal McKinney. I am the health and safety co-ordinator for

CUPE Local 543 and in this capacity I represent over 1,000 employees whose occupations range from clerical to social service workers to health care workers, building inspectors, bylaw enforcement officers, etc. I am a health and safety instructor, a health and safety representative. I hold certificates in occupational health and safety in a number of categories.

Mr Saunders: My name is Rick Saunders. I am a health and safety co-ordinator with Local 82. In this capacity I represent 300 municipal outside workers whose occupations range from horticulture to heavy equipment operators, motor mechanics, pollution control employees and solid waste employees. I am a certified safety instructor and hold certificates in occupational health and safety.

Mr McKinney: Between us we represent over 20 years of health and safety experience and expertise on the front lines.

Mr Murphy: We would like to take this opportunity to raise the preposterous situation this committee has forced the workers of Ontario into. We would like to use the situation we find ourselves in today as an example of this. Several Windsor area locals attempted to come before this committee and voice their concerns on Bill 208. Even though each one of these affected parties had a desire and also the material to present for one half-hour each, all were denied and informed by this committee that at the hearings in Windsor only one half-hour would be set aside to address all of the needs in this area.

This, we suggest, serves an injustice to this committee, but more importantly to the workers of Ontario. They will not be heard on this important matter and we believe that this committee function is simply a matter of going through the motions. It is apparent from the minister's amendments and his discussions while this committee was in deliberations that in fact this legislation is a fait accompli.

After many years of workers in Ontario suffering incredible carnage on the job, the Occupational Health and Safety Act was passed in 1979. The purpose of the act was to grant workers minimal rights in order to defend themselves, to facilitate labour and management working together, and finally, to reduce the carnage in Ontario workplaces.

I do not think it is necessary to go through the stats. I think they have been repeated to you a number of times, but I think it is important to know that the Minister of Labour's own advisory council, made up of labour, management and academics, concluded, "The promise of im-

provement in the future wellbeing of workers implied in the royal commission report"—the Ham commission—"has, for the most part, gone unfulfilled."

Mr McKinney: As to specific criticisms of Bill 208, one of the first problems we encounter with Bill 208 is its proposed amendments and the proposals for management and oversight of the health and safety associations, research and training centres and medical clinics.

The original proposal to have these matters dealt with by a bipartite Workplace Health and Safety Agency was and is a sound idea. Problems arise in two areas, however. First, the proposal to appoint a so-called neutral chairperson to preside over this agency is in flat contradiction to the stated goal of a bipartite agency. The government cannot have it both ways. Either it is an active participant in health and safety matters at all levels or it maintains its involvement at arm's length.

If the government feels that it is necessary to have third-party involvement in the agency, why then does it not have assigned to health and safety committees in each workplace a Ministry of Labour safety inspector to help chair those committees? If labour and management can be trusted to manage things at that level, why not at the level of the proposed health and safety agency? In fact, the so-called neutral chair proposal is an attempt by the government to influence matters that it is reluctant to take responsibility for.

As a health and safety activist speaking on behalf of our membership, we bluntly challenge the government to either lead, follow or get out of the way. Either take the lead in health and safety matters by aggressive monitoring, enforcement, prosecution, training, etc., or let labour and management get on with it themselves without a government hidden agenda to influence matters.

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The second problem is also a matter of appropriate spheres of jurisdiction. Labour has accepted the bipartite board of directors as a useful step in rationalizing the various health and safety organizations under one umbrella agency. However, as a health and safety activist within labour, I have grave concerns about interfering with the independence of worker health and safety centres.

In our own experience locally, we have found these centres to have been the most valuable in health and safety matters. Locally, the Windsor Occupational Safety and Health office has proven itself to be a valuable resource for

first-class information and advice for those concerned with such matters. Most of the tens of thousands of inquiries that have come to them have come from workers who felt that they could trust WOSH and that WOSH's sole concern was for their safety.

In a like manner, when CUPE Local 543 and Local 82 negotiated with the city of Windsor on how to implement the WHMIS training as required by law, we chose the material and training systems designed by the Worker's Health and Safety Centre. The initial phase of this program was largely successful due to the first-rate quality of the material and systems used. This is a fact acknowledged by the employer.

It is our contention that the high-quality services offered by these two agencies and the other various worker health and safety centres, clinics and offices, stems directly from their unequivocal commitment to serve the workers' interests, not the interests of management, not the interests of a particular government. Putting people on the boards of directors of these agencies who do not share that clear commitment to the workers' health and safety is a sure way to undermine the integrity of those agencies, to dilute their focus with other concerns, and ultimately to compromise the quality of their services.

We say that the proposed bipartite agency should indeed oversee and co-ordinate all the various health and safety organizations, but there should be a clear division between the agencies meeting the distinct needs of management and those meeting the needs of workers. Furthermore, let the agency fulfil its mandate of bearing the ultimate responsibility for making appointments to the board of directors of the various organizations by appointing worker-oriented directors to worker-oriented agencies and management-oriented directors to management agencies.

The rationale for this is very simple. These independent worker-oriented agencies work, and they work well. Time and again they have proven their worth. So if it's not broken, don't fix it. Parts of the existing health and safety system that are working well should be integrated whole into any new and improved system. The worker-oriented organization should be included in the mandate of the health and safety agency, but they should not be unduly tampered with.

Mr Murphy: I would like to deal with section 23a. This section deals with the right of a

certified member to shut down unsafe work, bound by the criteria in clauses (a), (b) and (c).

This section without a doubt is a step forward to further protect workers on the job. It is a method by which an experienced and trained worker can eliminate actual hazards in the workplace. The minister has stated in the House that this action undermines the partnership between labour and management. I would suggest to this committee that given the criteria by which a certified member would stop work, is in itself a demonstration that management has already broken the partnership referred to.

The certified member is quite simply attempting to protect the workers he or she represents. It is one matter to foster a partnership. It is an entirely different matter to be completely inactive when an employee's health and safety is at issue. The minister himself has said, and the statistics bear out the fact, that workers in Ontario do not exercise their right to refuse frivolously, and logically it can be assumed the certified members will conduct themselves with due diligence.

The fundamental question here is, should a knowledgeable and trained individual have the right to identify and correct as quickly as possible hazards that workers are unaware of due to their lack of training or experience? The answer to this question is, of course, yes. To decide any less would be to promote carnage towards all workers in Ontario.

I would like to address the amendment to subsection 7(6). This amendment serves only one purpose and that is to completely cripple the joint health and safety committee in its main, primary function; this is to identify hazards in the workplace. I can assure this committee that if it had an opportunity to review minutes of any committee, it would see that on a regular monthly or bimonthly inspection, numerous hazards are being identified and eliminated by the committee. This amendment flies in the face of simple common sense. I would also like to point out that these monthly and bimonthly inspections have in fact been agreed to by the parties, labour and management.

If it's not broken, don't fix it. This type of tampering will, without any question, direct matters of health and safety more to an adversarial system. It will foster confrontation between employees and management. Worker strategies around health and safety will simply have to be to refuse to work once the hazard has been identified, thus further alienating workers in Ontario from the stated goal of partnership. As I

have said earlier, this sadly detracts from the effectiveness of any health and safety committee in any workplace.

This committee has to consider accident and death rates and compensation costs and then make a determination. Do these statistics warrant a weakening of one of the primary functions of the joint health and safety committee? The answer, as I am sure you are aware, is no. To say yes would contribute to the increased carnage against Ontario workers.

Apparently we are running short on time at this point. I would like to leave 10 minutes for questions.

I think this group really represents an interesting composition, and that is that we all sit on joint health and safety committees. We have all been involved in health and safety on a day-to-day basis and have all been involved in work refusals.

Earlier, I think there was a question posed that talked about the concept of a certified worker at the point of making a decision to stop work, and I think the proposition was that that should be a joint matter, that labour and management, both certified members, should take that action. I would like to address that if I could.

In workplaces throughout Ontario, usually what happens is that people who sit on joint health and safety committees are, for the most part, lower-management people. Therefore, it is logical to assume that a lower-management person would be a certified member. That supervisor has other priorities at hand. Clearly, health and safety is not the number one issue here. On the other hand, the only issue the certified labour rep is dealing with is the safety of the employees. When you bring those conflicting agendas together, you start to run into problems. That is the situation we are in now when it comes to the right to refuse. We cannot come to a consensus. So for a certified member to shut down the workplace, it has to be the labour certified member who does that.

Management already has the right to shut down the workplace at any time. You have to take those things into consideration. That certified worker rep, because of the employees he represents, is bound only to one agenda and that is to protect the workers whom he represents. On the other hand, a certified management committee member has other agendas that he is trying to fulfil at the same time, and they are in conflict with the intent of what is being proposed here, to protect workers day to day on the job.

The Chair: Thank you. Mr Fleet has a question.

Mr Fleet: We have had evidence here today of problems asserted by the car manufacturers with the inappropriate, in their view, exercise of the right to refuse. One of the points that comes up in your brief is the responsibility of workers and whatnot, but in the light of the kind of experience that was related by some of the car manufacturers, how do you respond to the fear that employers have consistently indicated, which they have with the right-to-stop-work provision, that at the time of negotiations—I do not think during the ordinary course of operations, but at the time of contract negotiations—inevitably there will be some workplace where the right to stop work would be used not for the purpose of dealing with safety issues but rather to further an interest in contract negotiations?

1650

Mr McKinney: If I could respond to that, first off, while these concerns are continually being voiced by management, including the last presenters and the car companies, as you mentioned, I am not aware of any evidence that supports those claims. In fact, studies in the past have tended to indicate that the right to refuse work is not used frivolously.

In point of contrast to their concerns about pressure tactics being used inappropriately for negotiations, I would like to direct your attention to the other side of that same problem, which is management harassment and reprisal directed against workers for using their right to refuse unsafe work and for using their right to investigate health and safety conditions in the workplace. If you are going to admit to the validity or even consider the validity of management's concerns about production and profitability when health and safety is being required, then I would say it is fair to ask that the reprisals and harassments that workers do suffer be considered also. If you look at page 13 and past, there is a whole section in here on harassment and reprisal, how the workers see this whole system.

Mr Fleet: I read that. I read all the way through the brief.

Mr McKinney: That is the reality we deal with day to day in the workplace. I only cited three examples in this brief, but they are very concrete and they are very real.

The problem is not with the workers using their right to refuse frivolously. There are already quite extensive means of dealing with that, both in terms of the act and in terms of discipline that the employer is perfectly free to use in cases of sabotage, and that is what we are talking about

here, to speak plainly. That is not being disputed here.

The reality is, however, that that does not occur. The reality is that what happens is somebody says: "I'm not sure if this is safe. Should I be doing this? Should I be using that? I would like some information on that." The next thing you know, they are getting an infraction for a violation of the dress code. That is the reality. People are harassed off their jobs and out of workplaces when they take a strong stand on health and safety. This is fine as far as management is concerned, all too often, because then the rest who are left there are discouraged from using their rights, which are guaranteed under law. That, I am afraid, is the reality of it. It is the workers who are being victimized, not management.

Mr Murphy: Let me just make a point here. One of the propositions being put forward here is that, generally, management would like the system to work like this, that a worker cannot refuse to do unsafe work until he has first notified his supervisor that there is a hazard. I forget the precise section. We have had to deal with that, because we deal with this stuff day by day, and this is what happens. The employees notify their supervisor that there is a hazard. Now, what happens is, you have locked in that system, and a day later the situation still exists; a week later the situation still exists.

I suggest to you that if the committee had the time and the resources to investigate it, what you would find is that most employees are doing that. Most employees go to their supervisor on such and such a day and say: "Listen, such and such is wrong. Should I get it fixed? What do you think I should do about it?" The reply is, "I will look into it." Finally, the employees are ordered to keep working on that piece of equipment and one of them finally plucks up the courage to put it all on the line, risk termination, risk discipline, risk all of this harassment—because we see it on a day-to-day basis—and he refuses to work.

Let me tell you, when a worker refuses to work in his workplace, all hell breaks loose. I have heard employer after employer come before this committee and say that health and safety is of paramount importance, and I know people who work in these workplaces, and that is just not true.

Mr McKinney: Keeping the line running is the most important thing, unfortunately.

Mr Murphy: Health and safety is on a list of priorities, and if production has to be met today, I do not care what you do in that plant, if you

refuse, it is frivolous no matter what the circumstances are. And if you refuse, you are a troublemaker.

Mr Fleet: I appreciate what you are saying. One of the problems this committee and any government is going to face is that when you are dealing with as varied a number of circumstances as exist in the various workplaces, with different kinds of employers, you get different employers and, for that matter, different groups of employees with rather different ideas and approaches.

One of the problems we have is that we do have employers, a fair number of them, who have come forward and indicated that they are able to accomplish certain things because they have what amounts to a high level of trust between the employer and the employees, circumstances that perhaps you do not enjoy in your particular workplaces or your members' workplaces in all instances.

We cannot legislate trust. We would like to, but we cannot. All we can do is try to legislate things that promote circumstances where trust is more likely to occur. That cuts both ways. That is one of the problems we have with employees.

For instance, I did not hear the car companies today saying that all instances where the right to refuse was exercised were bad; rather they said it was just at a particular time. That is the fear I have heard most often. They are worried about at contract times when there is a stress that is unusual to the workplace that perhaps causes people to act differently. We have also heard evidence from people in labour situations where they are suffering the kind of harassment things you have referred to.

The Chair: I am sorry to interrupt. We are almost out of time and I wonder if you would leave time for a question from Mr Wildman.

Mr Fleet: All right. I will defer in light of the time.

Mr Wildman: I have read through the brief as well. I want to congratulate you for its comprehensiveness. Also, I want to speak directly to the cases of harassment that you put forward.

You have three examples there: one of a part-time employee, a student who suddenly has

his application for rehire lost after becoming active in health and safety; another person who is permanent part-time who suddenly finds he is getting fewer and fewer hours after he becomes active in health and safety, and another person, a permanent employee, who has to go through a grievance procedure and then transfer into another department in order to keep her position after becoming active in health and safety.

Can you answer two questions: One, are these isolated incidents or are they examples of a wider problem?

Mr McKinney: They are examples of a wider problem.

Mr Wildman: Second, what effect have these kinds of things had on your other members in terms of exercising their rights and their responsibilities, frankly, under the Occupational Health and Safety Act?

Mr McKinney: I have a great deal of trouble now as health and safety co-ordinator keeping good personnel on all the committees at all times simply because I have a dearth of volunteers stepping forward wanting to be health and safety activists. That is the effect. The workplace is not being monitored properly by worker representatives, because they are afraid.

The Chair: On behalf of the committee, I would like to thank you for your presentation today. You have capped off what was a very interesting day in Windsor and what I hope has been a productive one for all of us.

Mr McKinney: If the committee would indulge me for just one moment, I think there is one last point that we would like to make as we thank you for your time and trouble for coming here. That is that all workers have one thing in common regardless of whether they are public sector, private sector or what industry they work in. When we get up in the morning to go to work, we are going to work; we do not go to our places of work to die. We need your help to keep those places safe.

The Chair: Thank you for the caps.

The committee adjourned at 1700.

ERRATUM

No.	Page	Column	Line	Should read:
R-6	R-337	2	39	concerns, and also that the frivolous stoppage of

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair: Laughren, Floyd (Nickel Belt NDP)**Vice-Chair:** Mackenzie, Bob (Hamilton East NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Fleet, David (High Park-Swansea L)

Harris, Michael D. (Nipissing PC)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miller, Gordon I. (Norfolk L)

Riddell, Jack (Huron L)

Wildman, Bud (Algoma NDP)

Substitution:

Carrothers, Douglas A. (Oakville South L) for Mr McGuigan

Also taking part:

Cooke, David S. (Windsor-Riverside NDP)

Clerk: Mellor, Lynn**Staff:**

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:**From the Canadian Auto Workers:**

White, Robert, President

From the Motor Vehicle Manufacturers' Association:

Nantais, Mark, Executive Director, Committees

Waechter, Bruce

Boissin, Ron, Chairman, Health and Safety Committee

From the Windsor and District Labour Council:

Parent, Gary, President

Laposta, Nick, Secretary-Treasurer

From the Windsor Construction Association and Heavy Construction Association of Windsor:
McIntosh, William, Executive Director

From the Chatham and District Labour Council:

Hope, Randy, President

LeBlanc, Romeo, Health and Safety Representative

Warner, Harry, Second Vice-President

From Chrysler Canada Ltd:

Cooper, Cody, Manager, Labour Relations

Hunter, Ron, Manager, Occupational Health and Safety

From Amalgamated Clothing and Textile Workers:

DuCharme, Tony, Western Ontario Joint Board Manager

From the Ontario Public Service Employees Union:

Lowell, Mark, Chairman, Ambulance Division

Benard, Joe, Executive Board Member

Robert, Andy, President, Local 136

DeMatteo, Bob, Health and Safety Co-ordinator

From the H. J. Heinz Co of Canada:

Cobby, Donald, Manager, Industrial Relations and Personnel Services

Drummond, Arlo D., Loss Control Manager

**From the Canadian Union of Public Employees, Windsor and District Council, and CUPE
Locals 543 and 82:**

Murphy, John, Vice-President and Safety Co-ordinator

McKinney, Kendal, Health and Safety Co-ordinator, Local 543

Saunders, Rick, Chief Steward, Local 82



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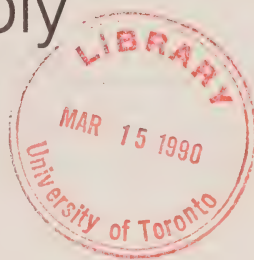
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No. R-12 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on Resources Development

Occupational Health and Safety Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Monday 12 February 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

Published by the Legislative Assembly of Ontario
Editor of Debates: Peter Brannan

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

ONTARIO STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 12 February 1990

The committee met at 0904 in Delta B Meeting Room, Delta Ottawa Hotel, Ottawa, Ontario.

OCCUPATIONAL HEALTH AND SAFETY STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Chair: The resources development committee will come to order. As many of you will know, the resources development committee was given the task by the Legislature as a whole to conduct public hearings across the province on Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

We are half way or almost almost two thirds of the way through that process. When we have completed public hearings on 208, we will then sit down as a committee to determine what, if any, amendments should be made to the bill, and then it is reported back to the Legislature as a whole, depending on what we have done with it, for final disposition and third reading.

In these hearings we do not have a lot of rules, but we do have some. The committee is an extension of the Legislature itself and therefore there are rules which we absolutely must follow. One of the rules is that there can be no signs with sticks on them. If we were actually adhering to the letter of the law, we would have to ban all signs, but I think that we have agreed as a committee that we do not mind a few signs around, but we simply cannot have the sticks attached to the signs in the committee rooms.

So I would ask before we begin that the signs that have sticks attached be removed outside the room, so we can proceed with the hearings. I would ask that you do that now, so that we can get on with the hearings.

The other rule is that people who come before the committee come before us at our invitation. We want to hear all the views, both sides of this bill. I would ask that you respect their right to make their presentation, even though you might most fundamentally disagree with the opinions you hear. I would ask that you respect that right, because we would certainly defend your right to be heard without harassment as well.

If we could get the sticks out of the room, I will introduce the committee and we can hear the first presentation. The committee is made up of members from all three parties in the same proportion as sits in the Legislature. That means on this committee we have six Liberals, two Conservatives, two New Democrats and a chairman, who is neutral of course.

On my far right is Doug Carrothers, the member for Oakville South. Next to him is Mike Dietsch, the member for St Catharines-Brock. Next to him is David Fleet, the member for High Park-Swansea. On my immediate right is Bob Callahan, the member for Brampton South. Next to him is Ron Lipsett, the member for the riding of Grey, and Jack Riddell, the member for the riding of Huron. On my left is Doug Wiseman, the member for Lanark-Renfrew. On my far left is Bud Wildman, the member for the Algoma riding and Bob Mackenzie, the member for Hamilton East. My name is Floyd Laughren and I represent the riding of Nickel Belt up north in western Sudbury. I am sorry, I overlooked Margaret Marland, the member for Mississauga South.

We are now prepared to proceed. If anyone wishes translation services, they are available with the units outside the door. The other rule is that every presenter has 30 minutes, and those 30 minutes can be taken up by the presentation itself or by a combination of the presentation and an opportunity for exchange with members of the committee. It is up to the people making the presentation which way they want to do that.

The first presentation is from the Canadian Chemical Producers' Association, Mr Bélanger and Mr Neff. The console will operate the microphones, so you do not need to push them on or off. Gentlemen, we welcome you to the committee and we look forward to your presentation. The next 30 minutes are yours.

CANADIAN CHEMICAL PRODUCERS' ASSOCIATION

Mr Bélanger: Thank you very much for the opportunity to appear with you today. Really we are here because we take our responsibilities seriously and because we believe in working with people rather than against people. We believe in consensus.

The Canadian Chemical Producers' Association is a national trade association. It represents 74 member companies, which produce about 90 per cent of all the basic industrial chemicals and synthetic resins made in Canada. The value of domestic production is about \$11 billion, and a very significant proportion of that is made in Ontario.

We believe that the products of the industry are serving major benefits to Canadian society and we continue to believe that we can make that contribution as a long-term offer for the Canadian economy and the Ontario economy.

There is no doubt that when we talk about the benefits we bring, we have to do it in a responsible way. It is fine to talk about having a right to operate, but that cannot be a one-way street. What we are talking about here is that the right to operate must equal as well a responsibility to operate safely.

We are no strangers to safety. We have a number of things that I think we can anchor ourselves on at the moment. One of the things, if you turn to the second last page of the whole brief, which is enclosure 5, I think you have a demonstration of the injury frequency and severity rates by industry. When you look at the chemical industry, which is at the bottom, it shows that in both 1987 and 1988 we have been significantly better than all other sectors of Ontario industry, to the extent of even about half of the next one that is closest to us.

This does not come from coincidence. It comes from having undertaken very strong programs of safety and training and having worked very closely with the health and safety committees that we have, and on an ongoing basis, trying to work in a consensus fashion.

0910

The other major component upon which we anchor our safety commitment, our occupational health commitment, is a program that we call "Responsible Care." Responsible care was first initiated in 1984 as a broad statement of principles that do state our commitment to health and safety for both inside plants and outside in terms of the environment.

This commitment is unusual because it is the first time that a sector of industry in terms of its association has made it mandatory for all senior chemical persons, the most senior chemical persons that are members of the association, that are in the company, to sign and commit themselves to follow these guidelines. These are individually signed and they are in fact a condition of membership in the association.

We have recognized that a simple statement like that does not go perhaps as far as people would want to, and what we have done to put some underpinning into it is we have developed six codes of practice that range from research and development through manufacturing, transportation, distribution, hazardous waste, management and another one that we call "Community Awareness and Emergency Response." We have those codes that are there. They have been developed as well with the help of community activists who are looking at the other side and seeing whether these codes do mean anything or not, and we have had their support in what we are doing.

Another aspect I think is important—and I guess I am trying to establish some credentials for coming here—we have tried to work very closely with the other important segments of Ontario society and Canadian society. We were a leader in developing the workplace hazardous materials information system. I lead the industry groups that participated in this, which was a consensus operation. I am saying this because we strongly believe that we can work together; we can find solutions together. And I think, having talked to our colleagues in labour, we strongly believe that they agree with us on this thing, that the solutions, while they are not ideal on every single item for everyone, have become a significant step forward.

The thrust, therefore, that we want for occupational health and safety in Ontario as an objective is to really try to bring people together, rather than in an adversarial nature, to try and find the solutions. We think we can. We think that these must be developed, and the minister stated those things, in a mutually respectful and concerned partnership.

Our work with the Environmental Protection Act and with WHMIS are both very strong demonstrations of that. We think that the best place to deal with those things is in the workplace and, again, our commitment to training, which shows up in the kinds of safety statistics that we have, I think is demonstrating that as well.

So anything we are saying is not counter to what we believe are the objectives of what is going on here, but much more to make sure there is a balance between rights and responsibilities; also, that you cannot grant rights without having some accountability. We are trying to be accountable and we want to stand up to be accountable. But there has to be this accountability of all the parties that are going to be a party to the final decisions that are going to be made.

We believe that government must be accountable in the end. This is a duty that it cannot pass on to other people. It cannot let go of that and so, from that aspect, we are very strongly of the belief that it is not possible to delegate such authority.

These are my broad comments, more philosophical comments, of what we believe in very strongly. Now I would like to ask Bill Neff, who is my vice-president of technical affairs, to deal with some of the more specific items in our brief. Thank you very much.

Mr Neff: Thank you, Jean. I will be brief so we will probably have some time for some questions. I would like to deal with about six issues that are covered in our brief and I will try to do it as quickly as I can.

Firstly, on the right to refuse and stop work, we support the current legislation giving individual workers the right to refuse work when they honestly believe it is unsafe. We do this provided that the employer retains his right to substitution. We fully support the principle as well that the replacement worker should be fully informed in advance.

We cannot accept, however, an expansion of this concept to a worker's unilateral right to shut down an operation because we believe it is dangerously oversimplistic and it does not differentiate between mechanical assembly and chemical processing operations. We have a concern that this proposed right may be abused and used for purposes other than occupational health and safety. If this were to happen, it could introduce an adversarial element into the workplace, which would be counterproductive.

We believe our plants can be shut down safely under any foreseeable circumstances. We have worked under our care code of practice to ensure that this happens. However, we must point out, based on experience in other countries, that the most dangerous period for a continuous process operation, is during shutdown and startup. Any arbitrary or unplanned order to shut down could therefore actually increase the danger to workers and the surrounding community, even though it was intended to do the opposite. We therefore have to unequivocally oppose this proposal as it is stated in the act presently as a matter of principle.

We believe that the proposal is not balanced because it gives a certified worker the unilateral right to shut a plant down without having to consult with the employer first. We believe that consultation should take place before any right to do that. The bill, we believe, is deficient in that

the right is not balanced to ensure that this new authority is used responsibly. The issue of accountability and compensation to employer should this provision be abused is not addressed, in our view, and this is a serious omission.

If there is a need to enforce safe practices beyond the individual right to refuse, we believe these powers should be consistent with the broad objectives of the act and anchored on the principles that strengthen the internal responsibility system and emphasize teamwork and not confrontation. Power should be limited, in our view, to immediate and serious dangers to life and health. Any new power should operate under a well-defined and predictable process in a way that encourages problem resolution rather than allocating blame.

We would suggest a more balanced approach in that we believe in the act there should be an explicit obligation to immediately consult if a certified worker sees a situation that may endanger human health. We believe this consultation should take place before any unilateral action is taken. This is consistent with Swedish law. There is an obligation written into Swedish law that when someone finds it, he must consult with his opposite number. In the event, we believe that most cases under this thing will be resolved then and there, which is consistent with resolving things at the workplace. We think that is the best solution.

In the event of failure to resolve differences, we believe a Ministry of Labour inspector could be called in by either side and that the inspector must respond immediately.

0920

In the interim, workers' safety would be protected through an existing individual right to refuse. We would support an additional obligation on the employer to notify or inform any substitute worker that a difference of opinion exists between the certified representatives and that a ministry inspector has been called in. We believe that with that additional obligation to inform, that substitute worker would know there is a serious difference of opinion and could make his own judgement in an informed way. We note that the Ministry of Labour inspector can use existing legislative powers when he arrives to immediately tag any equipment he feels is unsafe.

In the longer term we submit that explicit criteria are required in regulations to define who is a poor performer and who is not. We have such ideas about this, but we believe that this needs some more consultation. Such criteria, however,

should take into account the number and severity of legitimate unacceptable incidents, as well as the number of workers in the workplace and the time period for such a determination. We would offer the assistance and expertise of our companies in trying to find such criteria on a very short time frame basis.

With the agency, I am sure you have heard the various arguments, but we are concerned about the mandate and the fact that we believe this should be restricted to training and education and research in occupational health. We believe the agency should not be empowered with an operating responsibility, since this is the correct responsibility of government, which is the only party that can represent all of society in a balanced way.

As far as composition is concerned, we believe as a democratic principle that participants from both management and labour should be as close to representative of their entire constituency as possible, and we think that is a good principle to operate under. There is that aspect, but I think I would like to emphasize two other aspects.

There is the potential, we fear, in a voting arrangement to block vote, one side against the other, and that could end up with an adversarial aspect to something on which everyone wants to be co-operative. We believe that a win-win scenario would have the agency operate on the basis of consensus, as opposed to the proposed voting approach. Now this is not as far-fetched as it may seem.

Jean Bélanger has indicated that we have come to an agreement on the workplace hazardous materials information system, on labels and workers right to know, and it is the basis for legislation now. That was agreed on consensus as opposed to voting, and it is working. We did the same thing with the Canadian Environmental Protection Act. We have played a lead role in that and we are prepared to continue to play that lead role, but we believe it is absolutely essential that we remove—if our objective is to get co-operation and partnership, we believe that we need to work in a consultative way.

I guess the other point I would like to make is that we do not believe it is proper for government to delegate its authority to a nonaccountable third party, whoever that is, and whatever that arrangement is. Government cannot get off the hook that easily and I do not think we should let it. It is the only group that can represent society and try to balance where there are differences. We think it is important, since the legislative authority is with the government, that it is a piece

of that agency. We would propose that the recently proposed neutral chairman that the minister proposed be filled by a very senior policy person from the Ministry of the Environment at the assistant deputy minister level or higher. We do not believe that this can—

Interjection.

Mr Neff: The other people can be there, but the fact is, how can something, when the authority and accountability has to retain—there has to be a connection somewhere.

The third issue is harmonization of notification requirements. With the introduction of WHMIS, and now, the Canadian Environmental Protection Act, or CEPA, the notification and testing of new chemicals coming in and the promised sharing of information with the provinces, we seriously question the need to retain section 21, although we do recognize that the provincial governments have a special responsibility in the occupational health field. We believe that these provincial obligations can be discharged by assessing the need for the control of worker exposure under the existing act once the assessment under CEPA has been completed, and the knowledge that has been gained from that assessment has been distributed to the workplace under WHMIS.

However, if section 21 cannot be eliminated, it must at least be made compatible with federal legislation, especially with respect to definitions and the period of assessment. This is particularly important to our industry and is one that you may not have heard as often, but right now they are not compatible and we are afraid of delays, duplication, slightly different definitions that are not really going to add a whole lot and are going to cause of confusion and delay. We might note that organized labour has been directly involved in the development of both WHMIS and the Canadian Environmental Protection Act and we believe they support the consensus.

Specifically, it is crucial that “chemical agent” be defined exactly the same as the definition in CEPA and provision should be made in the act to permit assessment periods and other details such as quantity triggers to be prescribed by regulation. This is possible once the federal government has finalized its inventory and its final regulations and sharing arrangements have been worked out. This is not done yet, so I understand, but I think it should be put as prescribed.

We started at 10 minutes after. I have two more items I would like to touch very briefly, with your permission.

On worker involvement in testing, we believe there should be a definition of "consult" in the act and we have given specific recommendations along the line as proposed under WHMIS. We would say that a worker to be present for "all" testing is probably excessive. We are not saying there are not cases when they should be there, but the wording of the act requires "all" cases. We think that could be unnecessary in that context.

On medical surveillance, we believe that if there are prescribed surveillance tests that need to be carried out, an onus on employers, there needs also to be a mandated participation by workers. We have given our views on medical surveillance in our brief, which allows voluntary programs and no mandated responsibility for workers to submit to those. But we are saying if government then prescribes for employers a test that needs to be carried out, we need to also ensure that there is participation of workers on those prescribed tests.

Two last items on the last part of the brief, page 42: we have reason to believe that confidential business information that is deemed to be confidential by established legal processes—we would say WHMIS and the Canadian Environmental Protection Act—which have been accessed by ministry officials through sharing arrangements by the federal government, is not presently protected under the Ontario Freedom of Information and Protection of Privacy Act.

We would point out that these arrangements were made with organized labour, were supported by labour and that there are questions and a process to ensure that this is genuinely confidential, and that there is also, through the commission, ways and means to ensure the proper information gets to the worker. We are not saying any confidential information, but information that has gone through a process to ensure that it is really confidential, has gone through tripartite review to ensure—anyway, we think it would be a good idea to try to ensure that this receives the same degree of protection that labour has agreed to federally, and we do want to facilitate it.

The Chair: Thank you, Mr Neff. We will proceed with the questions. We have about five minutes left, so I urge members to be as brief as possible.

Mr Mackenzie: I would like to know what your position is on the current bill. I take that it that you do not support the bill as it is currently constituted; that is, without the amendments that have been suggested by the minister.

Mr Neff: In all areas?

Mr Mackenzie: Yes.

Mr Neff: There is much in the bill we do support. There are some areas that we do not, which we have addressed in our brief.

0930

Mr Mackenzie: What about the suggested amendments the minister has indicated he wants to bring in? Is the bill then acceptable to your organization?

Mr Neff: On the introduction of professionals on the agency, the neutral chairman, we have added a wrinkle. We think that should be a connection to the ministry. We believe those have gone partway, but we do not believe they have gone far enough in some areas.

Mr Mackenzie: In other words, you are telling us that even with the amendments that have been suggested by the minister, your association does not support Bill 208.

Mr Neff: I do not believe I am saying that. I am saying there are many aspects that we do support in the bill. One of the areas we cannot support, for the reasons I have given, because we do not think it is going to be for the safety of workers or the community, is the unilateral right to shut down a plant without any consultation first.

The minister did not offer any suggestions. He left it to this committee. The way the bill is stated at the present time is that the plant is shut down first and consultation takes place second. We think that consultation, as is done in Sweden, should be a specific requirement in the bill for anybody who wants to shut down a plant, to protect people, to at least talk to his opposite number, before taking any action. We think that is a very reasonable position and it is a suggestion we make to you.

Mr Mackenzie: Does your industry or do your companies belong to and support the Canadian Manufacturers' Association?

Mr Bélanger: In support: what do you mean?

Mr Mackenzie: Member of the CMA.

Mr Bélanger: That association is not a member of the CMA, but I would imagine that a large number of our members would also be members of the CMA. I have no specific facts on that, but I think that probably a fairly proportion would be.

Mr Dietsch: I want to further discuss the issue of stop-work. If I heard you correctly, you support the stop-work concept with the proviso in there that there is joint consultation between the

workers and between the management. Am I correct in that?

Mr Neff: We are suggesting that the first step be mandatory consultation, an obligation in the act to consult. We believe our experience would be that most of the situations would be resolved at that point. We are then saying that to shut down a plant, it may be that it is shut down, but we think there is an obligation here for government, as is done in Sweden, to be called in.

We do support the concept of a worker not having to work in a situation that he feels is dangerous. They have the right to refuse. We believe that with the additional thing we have suggested, that any substitute worker be informed that there is a disagreement—then he will know that there is a serious problem there. The question has always been, “Well, will that second worker know there is a problem there?” We are saying that with those two amendments, we believe that worker would know. He would know that his certified worker representative does not agree with the employer and therefore we believe it would probably end up shutting the place down.

Mr Dietsch: For clarification so I understand it, what you are saying is there should be mandatory joint consultation first, before it is shut down. Second to that is that if there is a disagreement between the parties and there is a further feeling on the part of the worker, the individual will have the individual right to refuse. Next to that, if the company is looking for a substitution, there would be joint consultation between the workers and management during any substitution that would come into play.

Mr Neff: We are not saying joint. We are saying that there be an obligation on the employer to inform, because it would be the employer who would be seeking the substitute worker. He has an obligation to inform that worker that there is a difference of opinion and that an inspector is called in. I guess the second part is that the inspector would be called in immediately at that time and this is just in that interim period.

Mr Dietsch: I guess the view I have is that if there is justification, which I am not disagreeing with, for joint consultation during the time there would be a work shutdown, I fail to understand why there would not be joint consultation with respect to any substitution that would take place.

Mr Neff: The committee may feel this is the best way to go. As I say, I was clarifying our proposal. I do not know if the other person would

be around, but there would be an obligation to make sure that worker knew that there was a difference of opinion, a serious one.

Mr Dietsch: Presumably, there would be a short time span between these things that would take place. My understanding would be that the workplace parties would in fact be on the site, so there would not be a hiatus of long term, if you will.

Mr Neff: No, it has to be short-term.

Mr Dietsch: The other point I want to raise is with respect to the—

The Chair: Could we make this brief, because we are out of time?

Mr Dietsch: On the right you spoke of with regard to bad actors, as they have been called, you do not have any difficulty with parameters being drawn up to define bad actors that would be dealt with, perhaps differently, in the concept of joint workplace parties, than what would be considered to be an acceptable actor.

Mr Neff: I have no problem with the concept. I think we have to be very cautious in what is included in those. I have my own ideas which I would be prepared to put on the table for discussion, but I think that is a very difficult issue. I would say that tripartite or bipartite consultation needs to take place in a short time frame to work those out. It is a complicated area and I think we should not just jump into a solution without making sure. It is a serious issue.

The Chair: A final, snappy question to Mr Wiseman.

Mr Wildman: The other day in London we heard from 3M, and I think you touched on it on page 44 in your last comments, where they were saying that if they had to disclose all the chemicals they have in their plant to their opposition, perhaps they could figure out how they make certain of their products. They do work with the fire department and the health authorities and everything, and explain to the members, the workers in the plant.

When you mentioned the new subsection 34(5), are you really covering that off, that they could, without going to patents and that—if they put a patent out, as I understand it they have to say what components go into that and of course would be fair ball for their competition to pick that up and run with it. People could lose jobs within that particular industry or other industries. Are you covering that off on page 42, I believe your last comment there that you made this morning? Is that your concern as well?

That was the first time we have heard this from any chemical company, as I understand it, or anyone that is in manufacturing where they use a lot of chemicals. I think that should be stressed real strong as something that could help both labour and management to insure those jobs are kept there for Ontarians and Canadians.

Mr Bélanger: I think there are a couple of things we should say. Let me try part of it and Mr Neff will deal with other parts. We of course are saying that when we are talking about confidential business information, it does not apply in any case at all to health effects. These are not subject to confidential business information, so it is mandatory that this information be passed on and never be kept secret. There are systems—we worked that out under WHMIS. There was an agreement between labour and management and this is why there is now this information review commission which will also pass on the information to the people. On those sides, we think the health effects are appropriately protected.

Now, from the other aspects—

0940

Mr Wiseman: But you do have some concerns, do you, that if what is in the bill now is finally passed then that will not protect those people from keeping their confidential information about the business side?

Mr Bélanger: Yes.

The Chair: We will give the final word to Mr Neff.

Mr Neff: I guess the real protection for confidential business information is not in patents; it is the time and the amount of money it would take a competitor to find that out if it started from scratch. The more information that is made publicly available shortens that time and therefore limits the protection that is there. We believe the best place would be under the Freedom of Information and Protection of Privacy Act to exempt that type of information. That is not done, so we are drawing it to the committee's attention as an important issue.

The Chair: Mr Bélanger, Mr Neff, we thank you for your appearance before the committee this morning.

Mr Wildman: I just have another question.

The Chair: Okay. In the meantime we will call the next group up while we are sorting that out. Thank you, gentlemen.

The next presentation is from the Ottawa and District Labour Council. If they would come to the table, please.

Mr Wildman: There were a number of references to the Swedish law in the last presentation and on other occasions during our hearings. I was wondering if our researcher could get some clarification with regard to what the requirements are of the Swedish law as it relates to the right to refuse and the right to shut down.

Mr Fleet: Point of order: I wonder if you could also get whatever the law is for the state of Victoria, since that is the other one that has been raised.

Mr Wildman: Yes, that is right. That is a good question.

The Chair: We shall attempt to do that.

Mr Fleet: Good luck in translating it from the Swedish, by the way, Lorraine.

The Chair: Lady and gentlemen, we welcome you to the committee this morning, and we look forward to your presentation. For the next 30 minutes we are in your hands. If you will introduce yourselves, we can proceed. The console at the back will control the mikes, so you do not need to touch them.

OTTAWA AND DISTRICT LABOUR COUNCIL

CANADIAN UNION OF POSTAL WORKERS

Miss Sommers: My name is Betty Sommers and I am president of the Ottawa and District Labour Council. On my left I have Dave Knight, occupational health and safety officer for the Canadian Union of Postal Workers, and on my right I have Emile Martin from the United Steelworkers of America.

The Chair: Did you miss someone? I would hate to see you do that.

Miss Sommers: On my far left I have Terry Jenkins from CUPE Local 576.

There is much to say that is positive about Bill 208. However, given the time constraints to our presentation, the Ottawa and District Labour Council, accompanied by the Canadian Union of Postal Workers, has decided to put forward necessary criticisms and comments of concern regarding the negative implications of Bill 208, particularly as it has been refined by the minister at second reading. There will also be an examination of essential elements that are missing in Bill 208. The alarming accident statistics and tragic number of worker deaths that continue to occur in Ontario workplaces has forced the Ontario government to recognize the need for revised occupational health and safety provisions and improvements in the three basic

rights of workers: the right to know, the right to participate and the right to refuse.

The government approached these basic worker rights very tentatively when Bill 208 was introduced in January 1989. The changes introduced in October at second reading by the minister must certainly reflect a capitulation by the government to the rabid lobbying of the business community. Business groups were incensed that workers would be given the power to shut down the workplace. Actually, the business groups had a long list of complaints about Bill 208, which the Canadian Federation of Independent Business identified as the Ontario Union Health and Intimidation Act. In fact, the CFIB was urging its affiliate associations to pressure the government to withdraw the bill.

In contrast to this entirely negative approach of business, labour approached Bill 208 as a positive beginning to the process of improving workplace health and safety conditions. Bill 208 underwent considerable study within the labour movement prior to the formulation of a list of amendments required to improve the bill. Despite these contrasting positions, the government chose to ignore the constructive criticisms of labour and wholeheartedly endorsed the unprincipled demands of the business lobby. The truth can be seen in that not one labour-requested amendment has been made, whereas at second reading of the bill, the rollbacks and negative positions of the business lobby are so obviously reflected in the reforms tabled by the new minister. It was stated in the 12 October news release that "the minister acknowledged that some changes must be made if Bill 208 is to have the commitment from all parties necessary to make the system work effectively."

Labour sees no commitment from the employer side to accept positive change with a new, improved role for health and safety committees and union health and safety representatives. Despite this lack of commitment and the fact that the Liberal Party has formed the majority government that rammed through Bill 162, a truly abhorrent piece of legislation, labour still intends to press for legislative amendments to this bill.

Workplace Health and Safety Agency: The concept of a neutral chairperson has apparently been put forward as a compromise to the business lobby objection that organized labour would comprise half of the agency membership. The neutral chair would have to make decisions that favour the position of one side over the other in a dispute between agency members. The neutrality

of the chairperson would obviously be questioned if biased opinions are being reflected in the decisions of the chairperson. The addition of a third party makes no sense in the context of the internal responsibility system and creates a tripartite agency—government, labour, business—which is unacceptable to labour. We are not just talking about a neutral chair; we are talking about adding a third party.

Restrictions on the right to refuse: The background paper that supported the 24 January announcement of Bill 208 identified the problem correctly and proposed the right solution—to amend the act by broadening the definition of grounds upon which a worker may refuse to work. The new minister ran completely in the opposite direction in the face of employer criticism from the business lobby. The new minister narrowed the definition even further. Based on this Liberal reform, the right to refuse would be restricted to current danger, a hazard so great that life or limb is in immediate danger. It is incredible that such a neanderthal proposal could come forward at this time and in complete opposition to the recognition of the problem which was outlined in the 24 January background paper. Workers have not abused the right to refuse. It is certainly a fact that workers have been abused by the unsafe and unhealthy conditions in the workplace. It is also undeniable that this regressive insertion of a restriction on the right of workers to refuse unsafe work in the protection of their health and safety indicates that this government is quite prepared to abuse the rights of Ontario workers.

Public sector right to refuse: Current restrictions on the rights of public sector workers are a major concern to the Ottawa and District Labour Council.

The right to refuse unsafe work is qualified, as you know, for workers covered by the broad definition of "health care" in Ontario, including social service workers and for many of those covered under the Crown Employees Collective Bargaining Act. Ironically, these same workers are effectively prevented from negotiating protections into their collective agreements because they also do not enjoy the right to strike and thus have not got the leverage to obtain the necessary collective agreement language.

The restrictions which currently exist on the right to refuse for public sector workers must be revoked. These workers are subject to assaults and beatings and many other hazards on the job. If the work they are assigned is unsafe, they should be able to refuse it, period.

Similarly, the limitations proposed on the right to shut down for public sector workers would again establish two tiers of rights in Ontario. The Minister of Labour must fear that many public sector workplaces would be shut down were this right granted to public employees. The practice, as demonstrated in Sweden and other jurisdictions, has shown this fear to be unrealistic.

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Not to provide for the right to shut down means that the government of Ontario is willing to tolerate the many unsafe production lines, techniques and work practices and conditions in Ontario's public institutions. Management in these institutions is under no pressure to clean up the workplace without the provision of this basic right.

Certification, committees and the right to refuse: The amount of time allocated to obtain certification and the determination of course content may become contentious issues. There is also a concern for the establishment of an effective date by which workplaces have to have, at least, two certified members of the health and safety committee. These priority issues would have to be resolved by the agency member.

The additional restrictions on the ability of the certified member to stop work reflects a serious misunderstanding of the relationship between an employee and the employer by this government. There is no partnership between worker and boss. The boss orders the worker to do a job and the worker either does the job or faces discipline. The major exception to this is when the worker exercises his or her right to refuse unsafe work. Unfortunately, many workers will not refuse a direct order from their employer, even when the workers know there is a risk to their safety or health. The reasons for this are many, but primarily it is a fear for their jobs, the very real fear of lost employment when jobs are scarce.

Of course, many workers do not refuse dangerous work for a very simple reason: Untrained workers may not know the work is dangerous. The job of the health and safety committee is to monitor and inspect the workplace to identify and remove hazards, to spot and correct potential problems and to receive and resolve complaints and ensure that the health and safety conditions are maintained. A joint committee of employee and employer representatives is supposed to have a common health and safety goal, but there is no partnership.

The internal responsibility system is not working in most Ontario workplaces. Employers insist that since management pays the cost of

implementing control and remedial measures, management must make the ultimate decision. Committees make recommendations, not decisions. Agenda items are consequently often not resolved. The proposed requirement to force a response in 30 days will not lead to a resolution to the existing problem of nonfunctioning committees. Employers that do not have a commitment to health and safety will not effectively respond of their own volition. Employers that do have a commitment to health and safety generally would not need to take 30 days to respond. What is needed is a code of practice that establishes a hazard rating and administrative corrective action timetable that employers would be required to implement within a clearly defined, actual internal responsibility system.

Health and safety requires real change and improvement if the workplace carnage is to stop. The government offers only the illusion of action by continual reliance on the powerless health and safety committees and the nonfunctioning internal responsibility system.

The minister's approach to the stop-work issue is not grounded in reality. Employers obviously have the ability to not assign unsafe work and have always had the responsibility to stop dangerous work. The clear intent of Bill 208 when it was introduced was that the trained and certified employee representative on the committee would be able to require work stoppage when the three points established in section 23a were found to exist in the workplace or at the work site.

The alternatives proposed by the minister are unacceptable to labour as an attempt is made to distinguish between a good employer and a bad employer based on a vague concept and an unreliable health and safety record of achievement. There could be a presumption of guilt or innocence that has very little to do with employer commitment to health and safety. For example, a number of other factors influence the functioning of a committee and its perceived success or failure.

Workers unfamiliar with hazard identification and employees fearful of losing jobs are unlikely to bring forward problems to the health and safety committee. Therefore, a short agenda of items may exist, but the real problems will be hidden.

The Ministry of Labour has reduced its inspection schedule (code 99).

Accidents are not reported by fearful or harassed workers who are put on work continuation programs.

Labour will not participate in the agency and will withdraw support for Bill 208 if the right to refuse is not broadened as originally intended in Bill 208; if the right to have unsafe and unhealthy work stopped by order of the trained certified member is not maintained as was originally intended in Bill 208; if individual work refusals and stop-work orders issued by a trained certified member in compliance with the act result in financial penalties or reprisals against workers who, if not for the protective action taken, would have been exposed to a hazard; example: clause 24(1)(c) must be affirmed and enforced by the ministry; if decertification results in lifetime ineligibility.

Labour strenuously objects to the Ontario health and safety activists being prevented for life from fully representing the health and safety concerns of workers on the basis of this punitive control measure. It is with some cynicism and some appreciation of the hypocrisy involved that section 23c is directed solely at the employee representative as another disciplinary tool to be used by the employer.

There is no lifetime supervisory ban for supervisors who continually issue orders contrary to the act in placing workers' health and safety at risk. There is no additional onus on the certified representative of the employer to utilize his training in the recognition of hazards to shut down work that is unsafe and unhealthy, with a failure to do so resulting in a lifetime restriction for negligently not exercising his power and thereby exposing workers to a known hazard. If the certified member can demonstrate the reasonableness of his or her belief that workers were in jeopardy, a decision to stop work that subsequently has proven to have not been necessary should not result in a lifetime suspension of rights which would prevent the still-valuable contribution of a trained health and safety member. In health and safety matters where the potential for loss is great, one should always err on the side of caution.

The foregoing highlights some of the concerns labour had with Bill 208 and the reforms proposed by the new Minister of Labour, but this brief would be incomplete if the following were not identified as problems and concerns of labour.

1. All nonfederal employees working in the province of Ontario should have the rights and protections of the provincial Occupational Health and Safety Act.

2. The health and safety agency should determine the proper representation on the

boards of directors of organizations receiving agency funds.

3. Monthly workplace inspection must be conducted by joint health and safety committee members; example: at least once a month the entire workplace must be inspected for hazards and to ensure corrective action to identified problems has been implemented.

4. Restrictions placed on the workplace parties with respect to membership on the joint health and safety committee must be equally applied or removed; example: there is no equality in a system that requires worker members to come from the workplace, whereas management members need not do so.

5. Technical advisers should be accessible to attend a committee meeting on the request of either party.

6. All chemicals entering Ontario workplaces must be tested and certified as safe for handling or use and training provided as per workplace hazardous material information system requirements.

7. No worker should be assigned a job that has been refused as unsafe until the refusal has been investigated and the concern resolved.

8. The trained and certified member must not be prevented from investigating the complaints of workers; example: the qualifier word "may" as in "may investigate" is subject to restrictive application which could prevent the certified member from meeting his or her responsibilities under the act.

9. Construction sites need trained and certified work members at every work site where 20 or more workers are present.

10. The requirement to have only one certified member of the committee from the employees and one from the employer is inadequate as a protective measure, given that the worker member may get sick, go on holidays or simply be unavailable in a multishift workplace situation.

In conclusion, health and safety is a serious subject. Passions run high on the labour side because we know workers who have died and have been seriously injured when preventive action could have been taken and should have been taken but was not. Nothing was done. The accident happened.

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It is not an accident when management refuses to act on a known hazard. It is an assault when the worker is subsequently injured. When a worker dies as a result of management neglect or indifference to a known hazard, then it is murder. Workers in Ontario have been assaulted and

maimed for life. Workers have been murdered by uncaring employers and careless governments that do not give a damn for workers except at election time. Workers elect members of Parliament to protect them and their rights. Do not fail Ontario workers by passing Bill 208 without these amendments. Workers need to live long and healthy lives in this province.

Now we will hear from Emile Martin from the United Steelworkers of America, who will give us a few words.

Mr Martin: My name is Emile Martin and I am representing approximately 2,000 steelworkers in the Ottawa Valley. As stated in the brief, the locals that participated are listed. I do not wish to go through the whole brief because I do not want to take away time from questions, so I hope the committee would take into consideration going over our brief.

I would like to express my displeasure in not being accepted standing as requested and I would like to thank the Ottawa and District Labour Council for giving us this opportunity. I would like to just highlight one situation that we have listed in our brief. It is in appendix A. It is a coroner's investigation that took place over a death at an industry in Hawkesbury called IKO Industries.

What happened, an individual lost his life, leaving behind a young family of two children and a wife. If you go through the verdict on the second page, where it was found it was insufficient training that caused the death, the recommendations were:

First, that the Occupational Health and Safety Act be amended to require licensing of fork-lift operators by the provincial Ministry of Transportation;

Second, that the use of a restraining device, be it harness, safety belt, cab or door or any combination thereof be made mandatory by the Ministry of Labour;

Third, that the issues raised at health and safety meetings be followed up on and, where safety recommendations are made, that they be acted on promptly. Compliance would require the co-operation of union and management;

Fourth, until the province brings out a formal training program, and hopefully this will be in the near future, that IKO management and United Steelworkers design a training program to ensure that all fork-lift operators receive the same amount of basic training on a compulsory basis and that they have demonstrated the skills and ability to perform the tasks to which they are assigned. A record should be kept of all those

who have followed the program, and it should be made readily available to immediate supervisors.

As a follow-up to that, on the next page you will see a letter which says, "In reply to your letter of November 16, 1989, this is to inform you that charges have been laid in this matter."

The Chair: Are you ready now for questions, Miss Sommers?

Miss Sommers: Yes.

Mr Mackenzie: I want to thank you for your very strong end to your brief where you call upon members and the government to pass laws that will protect workers. I would like to refer to three sentences in a letter that went from the office of the president of the Canadian Manufacturers' Association to the Premier (Mr Peterson), sent by courier on 2 March 1989. It says:

"Dear Premier:

"CMA is very disappointed that your government decided to introduce Bill 208 without further consultation to try to resolve its major flaws that have been identified by CMA and other associations in the province." It goes on to list them.

The second paragraph: "I raised this problem with you when we met on the matter of consumer legislation in January and indicated that depending on how the Bill 208 issue evolved, we might be back to you. Since then, meetings that Labour minister Sorbara has had with the CMA and with representatives of other associations have convinced me that you will need to become personally involved in resolving these issues." Obviously, they could not get agreement from the previous Minister of Labour.

The final sentence in the letter: "I will be calling you early next week to arrange a meeting. I hope that changes to Bill 208 can be made before the ground swell of opposition by our members and others in the business community grows out of control."

I am wondering if you find it significant that that letter went to the Premier. The new Minister of Labour has brought in or responded to, or said he wants to respond to, every one of the suggestions that was made by the CMA and the business community in that letter—every one they made in that letter. We have since heard that they want more changes, as well. I am wondering if it gives you any confidence in just exactly who this government is going to represent when this bill is finally brought into the House.

Mr Martin: It does not surprise me any. I am not familiar with all the changes that have been suggested in that letter because I have not seen it personally, but it does not surprise us any.

Looking at the whole concept of the suggested changes of Bill 208, we cannot see any real reason for it because, to my knowledge, I do not know of any workplaces that were shut down by workers. On the other hand, we know of plenty of workplaces that have been shut down due to free trade.

If you look in our Ottawa Valley alone, workers at Marimac, for instance, in Cornwall, are trying to purchase the workplace, so there are no facts for any of the recommendations that are even brought up in these situations.

Mr Callahan: I just have one question, to allow time for everybody else. Apparently you and the previous delegation have some concern about the independent third party. I think your concern is that if they made decisions that looked like they were going one way or the other, they may lose some of the trust of either party, I suppose. If that were to be eliminated, how would you propose to deal with a situation where there was a deadlock? What alternative do you suggest to overcome a deadlock, if you do not have a third, independent party? That is my difficulty. I can see your concerns and I can see it from both sides of the coin, but that happens in almost every body that sits—courts. Some people may perceive that the courts have shown a bias one way or the other, yet they seem to carry on. What suggestion would you make as to how you would overcome a deadlock?

Mr Knight: I would like to know how you are going to select a neutral third party when we are talking about a very emotional issue and one in which people have generally formed very firm opinions. I really do not think that you are going to find a neutral third party who is acceptable to both sides in this issue.

Mr Callahan: I am not sure that answers my conundrum. If you do not have that third party, that neutral third party, and you just have the two sides, business and labour, how do you solve the deadlock issue?

Mr Knight: My conundrum is, once you select that neutral third party, who makes decisions that obviously favour those who selected him, presumably the government, then I do not know how we are going to appeal that particular situation. I really do not think you have a fair situation when you have two to one. It should be bipartite, not tripartite, in this particular instance. I think that is the way that we should be going. That was the way the bill was originally written and I think we should remain with that.

Mr Callahan: I appreciate your answer, but it still does not give me the answer as to what you

do in a deadlock. Are you saying, because there is no right of appeal from that decision, that that is your concern?

Mr Knight: You bet.

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The Chair: Miss Sommers, Mr Martin, Mr Knight, Mr Jenkins, we thank you very much for your presentation to the committee this morning.

The next presentation is from the Canadian Manufacturers of Chemical Specialties Association. The committee welcomes you here this morning and we look forward to your presentation. If you will introduce yourselves, we can proceed.

CANADIAN MANUFACTURERS OF CHEMICAL SPECIALTIES ASSOCIATION

Mr Ott: Good morning. I am John Ott. I am the president of the Canadian Manufacturers of Chemical Specialties. With me this morning are Ian Campbell, our deputy chairman for occupational health and safety, and Mary Roy, our chairman for our occupational health and safety committee. Our presentation this morning will be, I will read our main presentation and Mr Campbell will give us some opinions and some of the instances that he is familiar with in his work, and together we will try to respond to your questions.

This presentation is made on behalf of the Canadian Manufacturers of Chemical Specialties Association, CMCS, the national trade association for the chemical specialties manufacturing industry. The association has been representing the interests of its member companies since 1958. CMCS member companies include the major manufacturers of chemical specialties, including aerosol products, detergents, soaps, floor finishes, deodorants, germicides and pesticides. Also included as members are companies that process, distribute or package chemical specialty products, in addition to the suppliers of raw materials to the industry.

The annual sales volume of such products by member companies is in excess of \$2 billion, and these companies employ more than 12,000 people in Canada in more than 400 establishments. A large portion of the industry's products are manufactured in Ontario. Thus, CMCS is particularly interested in any legislative activity which may affect the industry.

The association appreciates the opportunity to make a presentation to this legislative committee. Bill 208 will have a significant impact on our workplaces. The purpose of our presentation is to propose changes to the bill which would be

required in order to ensure that positive results are attained, both in the health and safety area and also in employee relations.

The members of this association are committed to improving occupational health and safety in the workplace, and we support the government in its statement: "There is consensus among workplace parties that the internal responsibility system, where operational, does have a major impact on the health and safety performance in the workplace. It has become clear that an internal responsibility system works better where there is a firm commitment to partnership throughout an organization."

We are concerned that the government has not supported these principles in Bill 208. Our association considers that certain aspects of Bill 208 are seriously flawed and may lead to labour-management conflict without improving safety in the workplace. Further, in spite of numerous representations from most of the concerned industry associations as well as many individual companies, the government has proposed no substantive changes which address these issues. While we have concerns about several features of the bill, our presentation will focus on what we feel are the most significant areas.

The work-stoppage provision: CMCS is fundamentally opposed to the granting of work-stoppage powers to individuals who have little accountability for their actions. Further, we believe that these work-stoppage powers will be a decisive factor in workplaces which will not contribute to improved health and safety records. The granting of such unilateral powers is contrary to the principles of building a co-operative partnership, as found in the most effective systems of internal responsibility. In fact, we are confused as to the rationale for the government being so insistent on the inclusion of this provision. We firmly believe that the majority of employers would expect that any worker, not just a specially certified worker, intervene in a situation where "the danger or hazard is such that any delay in controlling it will cause a serious risk to a worker."

Contrary to the work-stoppage provisions being a positive force for improved workplace safety, there is a grave concern that these will be used by workers as a tool to resolve grievances unrelated to workplace safety, causing increased disruption and ill will. This destroys rather than builds workplace partnerships.

With the second reading, the government has proposed a possible approach to work stoppage

for the committee's consideration. This vague proposal offers little comfort that the government has dealt soundly with the issue. What is one to make of statements such as, "It may be appropriate and consistent to make the decision a joint one unless the parties decide otherwise," or, again quoting, "Within such a model, workplace partners will likely continue to agree to alternate protocols for stopping dangerous work (including the right of certified members to act independently if circumstances dictate)?"

This association recommends that the government remove the work-stoppage provisions and, further, to remove consideration of certified members entirely from Bill 208. We believe that the right-to-refuse provisions in the current act are the appropriate mechanism for workers in immediate danger. The ministry maintains that there are problems with the current right-to-refuse provisions. These problems include worker inability to discern unsafe work conditions and fear of reprisal from the employer. There is the additional concern that workers consciously decide to put themselves at risk by accepting or creating unsafe situations. The solutions to these problems should thus focus on the skill level of the individual worker and not on the mechanics of the law.

The existing right-to-work provisions already provide the individual worker with the right to refuse work he thinks is unsafe. In fact, Bill 208 broadens the definition on grounds upon which a worker may refuse to work to include "work activities." Under the present legislation, workers have protection from employee retaliation and guaranteed equivalent pay during the refusal period. A work refusal investigation currently involves the employee, employer and a worker health and safety representative or committee member. Thus the existing provisions satisfactorily address the mechanics of the law, and no further changes are required.

A better approach would be to provide adequate training for individual employees on their rights and obligations under the work refusal provisions such that there is an improved understanding of its use. Health and safety representatives and committee members should correspondingly receive better training on work refusal investigations. This, combined with improved safety training for all employees, would lead to a reduced need for work refusals. This then removes the need for certified workers. The creation of an elitist position bearing special powers is detrimental to the co-operative employee group atmosphere. The manner of selec-

tion would potentially cause conflict, and due to the training required for these special positions, there would be a restriction on the necessary turnover in membership within the health and safety committee.

Our second concern is with the Workplace Health and Safety Agency. We understand that the agency will be established to provide training, consultation, promotion and research support for existing safety associations. Given the impact of this role, it is vital that the agency understand and reflect a variety of workplace cultures which exist in the province.

We welcome the proposed changes with the second reading, namely the addition of a neutral chair and four members bringing expertise as health and safety professionals. However, the government has not addressed the fundamental issue: that the agency needs to be broadly representative of the Ontario workforce. Indeed, the government does not seem to understand that members on this agency cannot represent workers or represent employers. How can these members obtain their mandate? Will we have elections? We have not seen anything which indicates this will be the case. It appears likely that these members will be appointed and hence be knowledgeable about their sector, but not true representatives.

We believe that the agency must focus on health and safety issues rather than political union-management ones. Since approximately two thirds of the Ontario workforce is non-unionized, this must be reflected in the worker representation agency board. The exact number of non-union representatives would vary as a proportion of organized and unorganized workplaces in Ontario changes.

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We do not believe it is the intent of government to be perceived as a representative body just for organized labour. However, the tradition of using organized labour to represent the unorganized workforce predominates the Ministry of Labour's activities. In this situation, the agency will determine the direction of many valuable services greatly utilized by the unorganized workplace that are not represented.

Involvement of workers from the unorganized workplace is fundamental to the establishment of a balanced approach at the agency. Services offered by the agency must reflect the culture of both unorganized as well as organized workplace. It is our contention that nonpolitical representatives such as these will truly advance the

objectives of improved safety performance as opposed to focusing on a power struggle.

We are prepared to work with the government in finding and selecting nonunion representatives for the agency. We are confident that a process can be defined to ensure effective representation from this sector, which represents the majority of the Ontario workers. Consideration should also be given to providing a balance among all worker representation which reflects the sectors of businesses within the province.

Finally, regarding the safety associations, based on our experience with jointly managed safety associations in Quebec, we suggest that equal representation by labour and management not be made mandatory. It is more important to have an association that functions well in practice than one that serves only a principle.

Search and seizure provisions: The new search and seizure provisions of section 28b allows inspectors to seize internal safety audits without valid justification. This practice will act as a disincentive for employers to perform audits. Recent regulations in other jurisdictions, the Canadian Environmental Protection Act for example, require an inspector to have reasonable grounds for believing a contravention of the legislation has occurred. The provision should thus be amended to provide for this limitation and restricted to documents other than internal audits.

Notification of new chemicals: This issue concerns the continuing unchanged provisions of section 21 requiring provincial notification of new biological or chemical agents. It is essential that there be harmonization of definitions and reporting between Ontario requirements and the new Canadian Environmental Protection Act. The economic burden of duplicate filing puts Ontario industry at a disadvantage, and thus it is recommended that the Ministry of Labour take this opportunity to include the appropriate amendments in Bill 208.

Employer access to health records: Subsection 34(1a) has been added to limit employer access "to a health record concerning a worker without the worker's written consent." The definition of health record is unclear, and the confidentiality concern should equally pertain to members of the joint health and safety committee. Access to information developed during a biomedical surveillance program is currently being addressed by a tripartite MOL committee. It is recommended that these recommendations reflect their final deliberations.

Additional powers of the joint health and safety committee: These new powers include monthly inspections of the workplace, increased involvement in all industrial hygiene and safety testing and access to health and safety reports without provisions for protecting sensitive company information. We recommend the following changes: workplace inspection should not be limited to a certified worker; consultation concerning industrial hygiene testing should refer to routine, planned testing, and report access should be restricted to information concerning hygiene sampling in that work site and include provisions for confidentiality.

Protection of confidential information: Amendments to the act are required so that confidential information released to the federal Hazardous Materials Information Review Commission and provided to officials of the Ontario government is protected according to the WHMIS agreements. These amendments should also prevent access under the Ontario Freedom of Information and Protection of Privacy Act.

Floor plans and material safety data sheets: The requirements to make floor plans available to workers and send material safety data sheets and inventories to outside agencies should be amended to include "as prescribed." This will allow for the tripartite committee studying these right-to-know provisions to develop regulatory guidelines.

Conclusion: CMCS is particularly concerned about the above-mentioned provisions of Bill 208. It is vital for this committee to rectify the shortcomings of this bill in order to make it the success that the government intends. The proposed changes will assist in achieving our mutual objective, a safe workplace. We count on your assistance to help us achieve this goal.

Thank you for this opportunity to present our comments and suggestions to improve Bill 208. I will now call on Ian Campbell to make further comments.

Mr Campbell: I would explain that I am manager of industrial hygiene and safety for Procter and Gamble. Just to give a little bit of background on Procter and Gamble, we have three plants in Ontario. We have a lost-time accident rate of less than one per 200,000 hours, compared with an Ontario average of 5.9. We are continually striving to improve and we invest in researching effective techniques for improving. While we are not perfect, we do know how to run safety programs that work. Our message to this legislative committee is, look to the companies that have successful safety programs for legisla-

tive guidance. What we say is that the right to stop is wrong. Wrong because it continues systems of conflict in the workplace. It is moving in the wrong direction.

[Interruption]

Mr Fleet: On a point of order, Mr Chairman: I am sorry to interrupt you like this, but there has been a consistent pattern of interruptions from certain identifiable members of the audience. These are not spontaneous. They are people who know better, and I really find it very rude, to say the least, to get persistent deliberate attempts to interrupt and frankly, I think to intimidate witnesses who are providing very sincere comments.

I, for one, would rather listen to the witnesses to hear what they have to say, and if there are any comments to be made, the members will make them when we are doing the questioning. I know the chairman shares this view and I wish that we could just get it across to every member of the audience.

The Chair: Mr Fleet, yes indeed, the chairman does share that view. I know that delegations can present opinions that are diametrically opposed to those held by people in the audience, but I think you would agree, those people in audience, that they do have a right to express those opinions before this legislative committee. It is much better that they are expressed in public than behind closed doors, so I would ask that you respect that admonition to allow people to make their presentations without harassment. Would you continue, please.

Mr Campbell: Thank you. Successful safety systems are not about conflict. They are about co-operation, collaboration and partnership. As written, right to stop is about raw power, capricious power at that. It is interesting the way the proposed legislation is phrased. A certified member "may" require a work stoppage if "the danger or hazard is such that any delay in controlling it will cause serious risk to a worker." My God, where is the responsibility? If there is to be a work-stoppage clause, surely it should say that the certified worker has the responsibility to intervene and protect the worker at risk. I find this very difficult. You have put a clause in that says may intervene or may not intervene.

Let us talk about responsibility, worker responsibilities. When I talk about worker responsibility, I do not mean for the enterprise or its goals; I mean responsibility for themselves and for their fellow workers. A major plank in our program at Procter and Gamble is to teach our employees, all employees, both worker and

management, to observe their fellow employees and if they see an unsafe condition or an unsafe act taking place, to intervene, to remove the person from risk, make a correction and obtain assistance as necessary. This is a responsibility, not a power. There is a big difference.

1030

As well, the focus is on the safety of the employee, not a grievance with management. Grievances with management, whether safety or nonsafety, are handled through regular employee relations channels. The fact is that right to stop will not work. My forecast is that, if implemented, we will not see any reduction in accidents, injuries or fatalities. What we will see is increased conflict in the workplace and hardening of positions on both sides and our quest for safer workplaces will only be set back a number of years.

A few comments on the agency: We too are concerned about worker representation on the agency and the disfranchisement of two thirds of the Ontario workers who are not unionized. We do not understand and our employees will have a difficult time understanding why their viewpoint does not count, particularly when there are some very effective safety systems among non-unionized companies.

Further, there are a variety of work cultures in place from company to company. If mandatory training is to be designed by the agency, it must reflect and be responsive to these different cultures. Very bluntly, organized labour does not represent our employees or their viewpoints. Further, it is doubtful that they understand the high-commitment, high-productivity, technician-based systems in our plants or the nature of the relationships between nonmanagement and management employees. The position of the Ministry of Labour on this issue is beyond comprehension.

The Chair: Are you ready now for an exchange with members of the committee? We have Mrs Marland, Mr Fleet, Mr Wildman, Mr Mackenzie and we have less than 10 minutes, so I would encourage you to be brief.

Mrs Marland: Good morning. I am always brief. On page 6 of your presentation, in talking about safety associations, you say "based on our experience with jointly managed safety associations in Quebec." I wondered if you could elaborate on that and also if you could comment on the other aspect that we heard about last week in our hearings about the concern for the protection of a patented formula or product contents.

Ms Roy: I will comment on our experience with the safety associations in Quebec. This pertains to the sectorial associations. It has been our experience of involvement with them that we have a very standoff type of situation where we have equal representation on both sides from management and organized labour, to the point that one of the sectorial associations was disbanded because there could be no consensus reached on any of the programs that were recommended or dealt with at the association level. That is our experience in that situation.

Mr Campbell: I think there was the other question as well about protection of confidential information. Mr Wiseman, I would also address you on this issue. Under WHMIS there is the requirement to have material safety data sheets on site and to inform and educate employees as to the contents of those safety data sheets. Within the Ontario act there is a clause which also says that there are community right-to-know provisions on this. The issue at stake here is that there is much information that we are willing and feel we should share with our employees, but we are concerned that it does not reach our competitors.

Our only recourse under the current WHMIS legislation is to register confidential material as under the Hazardous Materials Information Review Act. Thus, if we do that, if that is our only recourse at the present time, that means that we have to keep that information from employees as well. Therefore we are keeping information from our employees that we would be willing to share with our employees for the sake of protecting it from our competitors. That is really the issue, the community right-to-know aspects of that.

Mr Fleet: I wanted to ask questions about the issues of right to stop work and right to refuse. On page 3 of the brief, the first paragraph, it is not very clear to me exactly what the experience or the practice is in the industries you represent. You indicate that you would expect any worker would "intervene"—that is the word in the brief—in a situation where there was a dangerous hazard and that this delay would create a risk. Do you understand that the practice in your set of industries is one of a right to stop work now? Is that what you are saying for every worker?

Ms Roy: In effect, it is such in that the employee is always free to advise management that there is a situation that he is not—

Mr Wildman: The law says he can refuse.

Ms Roy: The law says he can refuse, but he can also advise management. I talking of the

situation where they feel that there is something wrong with someone else's work situation and they can go to the management and say, "We feel that there is a problem here." They can take it to the health and safety committee as well.

Mr Fleet: Let's be clear, the right to stop work means the employee would stop without going to a supervisor necessarily. You are just saying that does not exist or it does?

Ms Roy: That does exist.

Mr Fleet: So they can stop it immediately as they see that—

Ms Roy: It does exist to stop it immediately.

Mr Fleet: If that is the case, then what is the problem with us putting it in the law?

Mr Campbell: It is not a power; it is a responsibility. I would say the responsibility is not to stop the work; the responsibility is to remove a person from danger. This is building on the right to refuse, that they would remove the individual from the danger that they are in, then seek management assistance to adjudicate the situation.

Mr Fleet: I am not sure if I follow. Are you saying it is a right to refuse work or a right to tell somebody else that he cannot do work? What right is it?

Mr Campbell: It is a right to invoke the individual's right to refuse.

Mr Fleet: Okay, I think. I am not going to be difficult. I am having a hard time understanding exactly what the worker has the right to do as opposed to what you hope he will do.

Mr Campbell: If they see an unsafe situation, they have a responsibility to go and intervene in that situation and remove the worker or workers who are in that unsafe situation so that they are safe.

Mr Fleet: If we were to rewrite this bill so that we would say that every worker has the right and the duty to "intervene"—to use that word—with a perceived danger situation that would endanger any worker, are you saying that you would support that kind of a provision?

Mr Campbell: It would still come back to the difference between a right and a responsibility.

Mr Fleet: Perhaps you can tell me what the difference is in the context?

Mr Campbell: A right indicates a power, and it is a power that may be invoked or may not be invoked depending on that individual's own wishes or feelings at the time. Responsibility indicates that they have a need to intervene on the part of that worker, not as a grievance against

management or anything, but to protect the individual in that situation.

The Chair: I hate to intervene in an interesting exchange, but could you allow Mr Wildman a final question?

Mr Wildman: There are two matters that particularly raise concerns with me in your brief and in your presentation.

The first is your suggestion that with regard to the right to refuse, somehow workers are not accountable either to themselves or to the members of their union if they are in a union, or for that matter to their families and their co-workers. Surely all people are accountable to someone.

The second is your suggestion that this power to refuse might be used in a capricious manner. Without giving any evidence that you have had experience with the right to refuse being used capriciously, could you give us some evidence of that? If you cannot, then why on earth did you use the word "capricious"?

1040

Mr Campbell: I believe my comments were that the wording of the legislation was that it could be taken that this is capricious. It was written in terms of "may" require the employer, not that they have a responsibility to intervene. If you are really serious, it would be that they have responsibility, not an optional type of—

Mr Wildman: You talked about removing the individual's right to refuse, about the need to remove that individual from a dangerous situation or a situation that he or she perceives to be dangerous. Do you not agree that if there is a perception of danger, not only that individual but all individuals should be removed from it until it is safe?

Mr Campbell: Yes.

Mr Wildman: Well then, what is wrong with giving a certified worker, someone with training, the right to go in and say: "Yes indeed, this looks like an unsafe situation. Nobody should be working here until it is corrected"?

Mr Campbell: Through the power of right to refuse. That would be the way it would be invoked.

The Chair: We really are out of time, Mr Wildman. Mr Ott, Mr Campbell, Ms Roy, thank you for your presentation this morning.

The Chair: The next presentation is from the Canadian Paperworkers Union, Ottawa and area. I see Mr Foucault making his way to the table. Mr Foucault, we welcome you and your colleagues

to the committee this morning. If you will introduce those people with you, the next 30 minutes are yours.

CANADIAN PAPERWORKERS UNION,
LOCALS 34 AND 73

Mr Foucault: It is a pleasure for me to introduce the person to my left, Guy Parizeau, the president of Local 73 of the Canadian Paperworkers Union. Local 73 represents employees of E. B. Eddy Forest Products here in Ottawa. To my right, Luc Denault is the president of our Local 34, who also represents employees of the same company, but in the papermill.

Also accompanying this delegation today are John McInnes, our regional vice-president for Ontario and Manitoba; André Berniquez from Local 50 which represents sister locals of the Canadian Paperworkers Union across the river in Hull, Quebec, which are taking some active interest in what is happening in Ontario in Bill 208; Claude Groulx, president of Local 33, who also represents E. B. Eddy Forest Products Ltd. on both sides of the river, and Pierre Lesage.

I am addressing you today on behalf of the Canadian Paperworkers Union, locals 34 and 73. Our members in this part of the province work at the E. B. Eddy mill, at Price-Daxion and at Buntin-Reid Papers, a division of Domtar. Our locals represent approximately 320 workers in the Ottawa area. Health and safety is our most important issue and we welcome this chance to speak directly to the committee that is studying this bill.

To put in context our appearance today, you should know that in the last eight months, eight employees have died in the jurisdiction of our union and we have placed a special emphasis in this area since that time. Health and safety has always been a primary preoccupation of our organization but the urgency certainly was stressed and the deficiencies of our approach to health and safety in industry are underlined by those losses of life.

There can be no doubt that occupational injuries and diseases have always been and continue to be a major public health problem. Much of the strain on our overburdened health care system is a result of the hundreds of thousands of lost-time injuries experienced every year in Ontario.

Our belief is that the government and the general public does not take health and safety on the job seriously enough, certainly not as

seriously as they consider traffic safety or environmental safety.

It is ironic, in this context, that Ontario has a new law preventing smoking in the workplace which allows workers to refuse to work in areas where they might be exposed to cigarette smoke. While it is hazardous, cigarette smoke is a very long-term hazard and does not present an immediate danger to workers. Yet those same workers must face an immediate and obvious threat to their health and safety before they can legally refuse to work in hazardous and unsafe jobs.

We want the government to be as serious about hazardous chemicals, very heavy work and repetitive strain injuries as it is about cigarette smoke. But we do not think that is likely to happen. The plain fact of the matter is that we have not shaken our primitive belief that an employer owns, in some sense, the workers he employs. Sure, a worker can always quit his job if he does not like the working conditions and this often happens. But when a person has a family to support, as most of us do, as well as equity in a job in the form of seniority, he or she has fewer options.

Absolutely everyone believes that the present occupational health and safety laws and regulations are not effective. When Bill 208 was introduced, it was called a "package of far-reaching proposals to overhaul the province-wide system for protecting the on-the-job health and safety of Ontario workers." This claim would be just another amusing example of political overstatement if the subject was not so serious.

The lives of workers and the welfare of their families are at stake. Bill 208 offers a few modest improvements in the present law and takes a couple of backward steps at the same time. It is a sure indication that this government is not committed to real reform on occupational health and safety, only more lipservice.

The shortcomings of the bill as we see them and the continued reliance on the internal responsibility system: it is reasonable to hope that employers will police themselves and willingly obey the law, since work injuries do result in higher workers' compensation payments, but the statistics tell us that this has not happened.

Since the present act came into force, lost-time claims have increased more than 30 per cent and the number of permanent disabilities have more than doubled. These are only the injuries which

have been reported to the Workers' Compensation Board. The true picture is much worse.

Drunk drivers lose their licence and they go to jail. We do not rely on an internal responsibility system to keep these hazards off the road. Public safety is too important to permit drivers to police themselves. For exactly the same reason, we need more workplace health and safety police to enforce the law.

We suggest that dramatically increasing the number of inspectors and inspections will decrease the drain on our health care system and result in a net saving to the public purse. Even if it did not save money overall, the resultant saving of lives and health would still more than justify the increased costs.

Workers are not guaranteed pay if they cannot work because another worker refused unsafe work. It is wrong to force workers into a situation where they may have to punish fellow workers if their employer violates the law or allows hazardous working conditions. A worker who refuses unsafe work is entitled to pay during the first stage of the work refusal. But it often happens that a refusing worker causes production to stop. In such a case, those workers who must also stop work should also be guaranteed their pay, since they are innocent victims of the employer's negligence.

The same rule should apply when the certified member stops work in a dangerous situation. If the certified member acts responsibly, and there is no evidence that workers trained in health and safety do not act responsibly, then he or she must not be put in the position of having to cause fellow workers to lose income in order to protect them.

A refusing worker will not be paid during the second stage of refusal under the current act.

Under the present act a worker who refuses unsafe work cannot be penalized in any way for this basic act of self-defence. This has been interpreted by the Ontario Labour Relations Board to include both stages of a work refusal. Bill 208 changes all this. Now a worker is guaranteed his or her wages during the first stage of the refusal. This is really no protection at all, since the first stage normally only takes a few minutes to go through. An employer can declare a job safe and assign another worker to do it and legally refuse to pay the refusing worker beyond that point. This is outrageous and completely unacceptable. What good is a right when you have to risk your income to enforce it?

Workplaces need only be inspected once a year under the current proposal. In the paper

industry there are many ongoing hazards that have to be monitored regularly. It may make sense to inspect some workplaces only once a year, but in our situation this would be irresponsible. We must have the right to inspect the entire workplace at least once a month.

Workplace inspections do more than identify hazards. They are an important educational tool as well. They make all the workers participants in the program to clean up unsafe working conditions. They allow workers who are right at their jobs to explain to inspectors exactly what their concerns are and to show them on the spot, instead of having to explain all of this in meetings, where the worker may feel uncomfortable. Regular inspections also keep an awareness of safety need in the front of workers' minds. This will result in fewer injuries.

As the government's white paper on Bill 208 states, "Neither workers nor management will be in a position to make responsible use of their respective rights if they lack the training required to recognize workplace hazards and deal with them effectively."

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Frequent workplace inspections are the most economical method of training and awareness of the entire workforce, not just those who are on committees. It is poor economics in every sense of the word for the government to actually limit workplace inspections. We know that nothing in the law itself prevents an employer from allowing more frequent inspections of the entire workplace than once per year. However, it is exactly those employers who do not want frequent inspections who need it most.

The right to stop work can be overruled by a management certified member. It amazes us how the government ignores basic legal principles when it comes to the area of occupational health and safety. For example, if I break into somebody's house and he tries to stop me, do I have the right to dispute his right to stop me and then continue stealing from him while we both wait for the police to arrive? In the workplace, this is exactly what has happened under Bill 208.

If a worker certified member, who is a highly trained person, stops work because of a dangerous situation which violates the law or a regulation, the management certified member can come along and start the work again, even before the inspector arrives.

This implies that the worker certified member can be ignorant or irresponsible, but that the management certified member can never be. Do you doubt that this is what the law implies?

Consider this: section 23c of Bill 208 reads, "An employer who has reasonable grounds to believe that a certified member improperly, negligently or in bad faith exercised a power under subsection 23a(1) or (2) may file a complaint with the agency." That is the Workplace Health and Safety Agency.

The agency then holds a hearing and the member's certification can be taken away. This is meant to prevent the irresponsible use of the right to stop work by the worker certified member. But where does it say that if a management certified member acts irresponsibly in starting work which has been stopped, he can be penalized? An employer will not make a complaint to the agency about its own appointee, and the workers whose health and safety were endangered by an irresponsible or ignorant act on the part of the management certified member have no recourse. The law goes only one way, in the direction of the employer's interests.

Bill 208 must be amended to ensure that when work is stopped it can only be only restarted by agreement of both the worker and management certified members or by an inspector. Anything less than this is meaningless.

Employers must be prosecuted for violating the rights of workers. We have a union which can protect us against employers who try to defeat our rights to refuse unsafe work. But not all workers are so fortunate. A worker without a union can be easily penalized by his employer if he refuses unsafe work and his only recourse is to go to the Ontario Labour Relations Board. This is very unlikely to happen and even if it did and the employer was found guilty, the penalty is nothing. The employer is only ordered to pay the workers what he would have been paid in the first place.

Anyone who believes that there are very few employers who would penalize workers for refusing to work is simply naïve. The facts of life are that workers without union are at the mercy of their employers. Have you asked the Ministry of Labour how many work refusals there have been in nonunion establishments? We are certain that these statistics, if they exist, will support what we are claiming. The only way nonunion workers will be encouraged to enforce their rights is if they know that their employers will be prosecuted for denying those rights.

Employers can ignore recommendations of the joint health and safety committee. While Bill 208 requires the employer to respond to a committee recommendation within 30 days, this is far too long a time, especially if the committee has

identified a potentially hazardous situation. It should be seven days. This would put the necessary pressure on the employer to address a potential hazard immediately.

Even with the requirement to respond, the employer can essentially ignore a committee's recommendation by saying that he has investigated the circumstances and sees no reason to take corrective action. It seems to us that a committee, to be truly meaningful, should have the power to order the employer to correct a hazardous situation, an order which the employer could appeal to the ministry. Since most committees are composed of equal numbers of management and labour members, this is not likely to happen very often. If it does, then clearly the situation is serious.

Workers need the right to their own advisers. Many health and safety problems and issues are complicated. In our industries, we work with many different chemicals and complex machinery. We do not want to have to continue to rely on the employer's experts to safeguard our health and safety.

If we have the confidence of an acknowledged expert, we should be able to bring him or her into the workplace to investigate our concerns. We would agree to giving the employer enough advance notice of this visit.

Certified members must investigate all complaints. Bill 208 only says that a certified member "may" investigate complaints from workers. This is not good enough. We must be guaranteed that our complaints will be investigated.

This also makes sense from the point of view of the employer and the internal responsibility system. If a certified member is not required to investigate all complaints, workers who want to protect themselves will be forced to use their right to refuse, a situation which almost always creates a conflict. Problems should be resolved as quickly as possible with a minimum of conflict. This would be achieved by the requirement to investigate all complaints.

No worker should be assigned a refused job until the issue is resolved. Put yourself in the place of a new worker who is told by his employer to do a job which another worker has refused as unsafe. You need the job. You probably have little sense of the safety problems in the job that was refused. You are uncertain of your rights. Are you going to refuse the job? Probably not, unless it is very obvious that the job is unsafe. The ability to reassign refused work gives the employer too much power. The

situation should be resolved by agreement of the parties in the workplace, or if that is not possible, by a ministry inspector before another worker is assigned the work.

Other concerns we have: there are other aspects of Bill 208 with which we disagree, but there is not enough time to mention them all. We can only mention our concerns about parts of the bill that may not concern us directly but still violate our principles of fairness. For example, the exclusion of farm workers from the act and the limitation of certain rights of public sector employees trouble us.

We appreciate the fact that the maximum fine has been raised to \$500,000, but we are sceptical that the overall average fines will rise. There have to be severe penalties imposed on employers who knowingly put workers' lives and safety in danger.

Our conclusions: Bill 208 at best is a small step forward in our efforts to reduce the unacceptable level of workplace death and injury in Ontario. It is not a bold new initiative. It still keeps the power over people's lives in the hands of the employers. Although the exercise of those powers can be challenged in some ways, this creates conflict which workers will usually lose out on.

This government does not have the courage to do something bold to save lives where it might interfere with employers' profits. If you really want to be bold, hire three times as many inspectors, prosecute employers who violate the laws and workers' rights, give trained worker health and safety representatives real, not hollow authority to address unsafe situations and protect absolutely those workers who act in self-defence by refusing unsafe work.

If you do these things, employers will naturally object as strongly as possible, but you will in reality be doing them and all of us a long overdue service.

Thank you for the opportunity to present these views.

Mr Mackenzie: Mr Foucault, you mentioned that you have lost, I think you said, eight workers killed in the last eight months in your industry.

Mr Foucault: That is correct.

Mr Mackenzie: Were any of those workers who paid the price managers or owners?

Mr Foucault: No, none of them were. They were all people who were hourly paid employees of the company by any definition.

Mr Mackenzie: The vast majority of the injuries, which you know is a problem in the bush

and the wood industry as well, are they the owners or managers of the operations?

Mr Foucault: The people whose lives are at stake in the shop are the hourly paid people. It is not the manager, not the foreman, not the plant manager; it is the workers.

Mr Mackenzie: You have heard some of the previous briefs and you have heard the excerpts from the letter from the Canadian Manufacturers' Association that asks for amendments, which it appears they are getting. Even though there was consultation with labour, management and the government on the original drafting of Bill 208, do you see this bill with the amendments proposed by the minister as certainly a betrayal of what labour expected?

Mr Foucault: Absolutely; there is no question. There were consultations that took place both under the auspices of the ministry as well as between the corporate and labour sectors that would have given Bill 208 the support it would have received in its original form, and there is a major departure from that position now, both on the part of industry and government.

Mr Mackenzie: It is obvious even from the letter from the CMA that at least the previous minister would not agree to the changes that were requested, and that is why they approached the Premier directly.

Do you have any sense of what business will require before it will come around to accepting this legislation? Even with the amendments we are getting, we have now heard from a number of business groups that the bill is still not good enough. Do you have any sense that there is any possibility at all of reaching agreement with some of the major business concerns?

1100

Mr Foucault: I think the idea of consultation and negotiation was the right way to start, but it is going nowhere. That is why we are appearing now before this committee of the Legislature to impress upon you, the lawmakers of this province, that we require our government to intervene in the situation and to establish a new order in the workplace as far as safety is concerned.

Mr Wiseman: It is perhaps a little unfair to ask you, but I have been listening to briefs the last two or three weeks or more and hearing the fact that someone stops a job and the other employees maybe do not get paid for that and this puts more strain on that particular person. Just thinking now in the other way, you are asking that the other part of the assembly line gets paid when someone

shuts it down for, hopefully, unsafe practices, but if the person shuts it down and it is proven it was not an unsafe area, it seems to me if you want the other persons to be paid, then something a little stronger is needed than decertification of the worker who stopped the workplace activity and caused many thousands of dollars of cost or loss of production.

Do you not think one goes along with the other and that employee should perhaps lose his job? Decertification, in my opinion, is not enough for someone who does that.

Mr Foucault: I disagree entirely. First of all, you are presuming that frivolity will be involved in the process. I suggest that is not the case.

We already have a situation where workers can exercise individually the right to refuse. There is no evidence at all—in fact the evidence is to the contrary—that the right has been abused or used frivolously. If we train people, in addition to giving them that right, to act under a certificate, then there is even less reason for that to happen.

This is something I would not say often, but when Bill 70 was passed, the then government of Ontario, the Davis government, had no track record as far as responsible use of the right to refuse goes because there was none in Ontario at that time. They said something had to be done to deal with the workplace health and safety situation, giving the workers some control over the situation. That government, through Bill 70, extended the right to refuse to a major portion of Ontario workers. No track record—just, in a sense, saying, “We expect and are confident that people will use this right as members of this committee used their powers reasonably and responsibly.” I do not think our track record has dissuaded us from that.

If I might complete my analogy—

Mr Wiseman: I wonder, though, if you could answer this. You say you have no track record that the right to refuse has been abused—

Mr Foucault: No.

Mr Wiseman: —but we heard in one presentation back at Queen’s Park that they had had three that they felt were unnecessary. Just so that we do not get the idea here that there were none, there are some.

Mr Foucault: I am not knowledgeable about all of Ontario. I am speaking from a pulp and paper industry standpoint. This is where our field of representation comes from; it emanates from this industry and we can speak from that perspective. I am not speaking for Ontario. Other people will be doing that from their own

perspective. From our perspective, we are saying that frivolity has not been a factor and there is not any more reason to expect that frivolity will be factor with certified workers than there has been with the right to refuse granted in 1978 through Bill 70.

Mr Wiseman: But if someone did refuse to work and they found that he did shut the whole plant down without justification, you feel that the decertification is a hard enough slap on the wrist but yet you want management to pay for all the employees who would be affected if it happened to be a line production, where maybe 100 employees were involved.

Mr Foucault: Mr Wiseman, your position has very little sympathy with a union, which appears today, which has lost eight members in eight months. You are concerned about marginal losses of profit and we are concerned about important losses of life. That is what we are talking about here. The problem with this whole debate is that we have had a misplaced sense of priority; that is what we have had here.

Mr Wiseman: I am interested in fairness both ways.

Mr Foucault: I think you have to equalize the playing field. You have measured life against profit. I wonder which one deserves more priority in your mind. I know where it lies in my mind.

Mr Wiseman: We are not talking about the loss of life in this particular instance. I am sorry that people lose their lives. What I am talking about is unnecessary shutdown of work. Do you think that a slap on the wrist by decertification is enough? On the other hand, you are saying that we should pay all those employees whom that person has put out of work because of shutting down that piece of equipment or whatever on the line. That is what we are talking about, not the deaths. Everyone in this room sympathizes with anybody who has been maimed or dies.

Mr Foucault: I would suggest the word “lipservice,” which I used in my address a while ago, applies to your statement. If the bottom line is profits here and we are not prepared to make the meagre departure that needs to be made in our approach to health and safety in this province, then this is lipservice. We appear here in good faith to present our views to a body of legislators in the province of Ontario and we expect to have the wellbeing of the citizens, the taxpayers—who by and large are the workers of this province—to be the priority in the minds of the people here.

Mr Dietsch: I also want to touch on this area, and I guess I am looking for a suggestion from you in terms of what you feel could be adequate penalties, if you will, with respect to management. You are no doubt aware that fines have been increased considerably and that for the first time corporate directors are going to have to hold some accountability process for their safety policies and records within their companies. The difficulty that legislators are faced with is in relation to drafting a law that is relevant for the whole of Ontario. I appreciate the fact that you have taken the time to come and share with us the view of the particular industry that you represent.

I think it was both GM and Chrysler that indicated to us in their presentations that there had been some cases of misuse; I believe it was during a slowdown in the work period and four or five or six times, I recall, over a two-day period there had been a misuse of the particular law. Compared to the decertification, I forget the sums of money that were attached, but as I recall it was in the hundreds of thousands of dollars. That does not mean to lighten the very serious nature with which you put forward your point over the deaths, because that is a concern to all of us.

Do you feel that management should have greater penalties that are in there in relation to the decertification? I am trying to get a feel for where you are coming from. On the bottom of page 6 you indicate that you feel management has not had a strong enough penalty.

Mr Foucault: It is a matter of onus, as I see it. The bad-faith exercise is what we are looking at here. If a shutdown takes place either through a right-to-refuse exercise by an individual or by a certified worker or member and that is done in good faith, then we have to let that stand because it is better to err on the side of safety.

If there is bad faith—and society is made up of all kinds of folks and we do not pretend to be any purer in our composition than the rest of society, the lawyers, the doctors; there is always somebody in there who is operating less in good faith and we have a factor there as well—if that is proven, then of course action should be taken because the system that we have all agreed to participate in has been undermined by bad faith. Bad faith is very serious. It undermines what we have accomplished, in a sense. But that has to be proven.

The error, if there is an error of judgement that is made in good faith, has to be allowed to stand in order to not discourage the right, if that is what you are asking me. But then the quid pro quo is, if

a job is shut down by an employee representative, a certified worker, and started up again and an investigation later proves that this was improper because in fact—quite frankly I am going beyond what I really believe. I believe it should not be started up until the investigation is completed.

1110

Mr Dietsch: One of the unions and I believe a couple of the management groups that came before us indicated a relationship to joint participation with regard to the startup of jobs, and I view this as not a great hiatus in between the period of time when that happens. If in fact the certified worker is there from the workers and the certified person is there from management and there is some dispute over the individual who is operating on that job, in your view can that be worked out by those joint partnerships on that job site or not—with the proviso, of course, if it cannot be, that the Ministry of Labour is called in?

Mr Foucault: I would suggest that the source of refusal is what triggers the agreement on a refusal. If it is a refusal which has been exercised by an individual, the individual himself must be eventually satisfied for the work to resume, as has been the case in the past. If it is a refusal or a shutdown triggered by a certified worker's decision to shut down, then obviously that is the party who has to be satisfied the job is safe to resume. So you would have to look at where the source of refusal comes from, in my view at least.

The Chair: I am sorry we are out of time, Mr Dietsch.

Mr Foucault, thank you very much for the brief. An interesting analogy is contained in it. We appreciate it. Thank you very much.

Mr Foucault: Thank you.

MOTELS ONTARIO

The Chair: The next presentation is from the Best Western Macies Ottawa Motor Inn. Gentlemen, welcome to the committee. We have copies of your brief. If you will introduce yourselves, we can proceed.

Mr Macies: Good morning. I am Gerald Macies, the general manager of Best Western Macies Ottawa Motor Inn here in Ottawa. I am also the vice-chairman of Motels Ontario, headquartered in Peterborough. My colleague this morning is Bruce Gravel. He is our association president and chief administrator.

Thank you for giving us this time this morning to make this presentation.

I am one of the almost 1,600 independent owner-operators of an Ontario small business and motel. My family and I own and operate the Best Western Macies Ottawa Motor Inn on Carling Avenue here in Ottawa. We have been doing so for over the past 50 years. It is a 123-unit, full-service motor inn, graded four stars under the tourism Ontario grading program.

I am also currently vice-chairman of the Motels Ontario association. This is a province-wide, nonprofit trade association headquartered in Peterborough. It represents the independent motel owner and operator and the majority of the small businesses in Ontario. With almost 1,000 members, Motels Ontario currently represents 64 per cent of Ontario's motel industry.

We are speaking to you today representing independent motel operators trying to survive in the face of ever-increasing federal and provincial government taxation and regulation that makes it more awkward and expensive to do business in this province—all this in a dramatically declining tourism marketplace. Last year, 1989, was a very poor year for tourism in Ontario. Expert predictions say that 1990 and 1991 will also be bad years for tourism.

Motels Ontario is a founding member of the Tourism Ontario federation. This is an umbrella federation of Ontario tourism trade associations. Next week Tourism Ontario will make its own detailed submission to your committee. We wish to state at this time that Motels Ontario supports the federation's submission.

We also support the detailed brief and presentation made on 15 January 1990 by the Canadian Federation of Independent Business in Toronto. Motels Ontario is also a member of this federation.

We completely support the statements made by the Minister of Labour (Mr Phillips) in the House on 12 October 1989 regarding Bill 208. He said the three basic principles of the bill are: (1) strengthening the labour-management partnership for ensuring health and safety at the workplace and provincial level; (2) ensuring that both labour and management have the training and education necessary to give full effect to their health and safety efforts; (3) providing greater authority for the new knowledge to be applied in the workplace so that the risk of accident can be minimized.

On 12 October, the minister also acknowledged that some changes must be made to the bill

if it is to have the commitment from all parties necessary to make the system work effectively.

We stress that we are strongly committed to the continuing and increased education of our employees to safe work practices. This strong commitment is widespread throughout Ontario's tourism industry. Here are two examples of this:

1. Ontario's tourism industry has successfully lobbied for and launched, with government co-operation, the tourism and hospitality industry health and safety education program, known as THIHSEP. THIHSEP's goal is the continued and increased education of employees in the tourism industry towards better safety measures. The tourism industry has placed a five-year commitment behind THIHSEP. Industry associations, including Motels Ontario, have volunteer members on THIHSEP's advisory board. I am also on the advisory council of THIHSEP. At our property, I have used the free information for THIHSEP countless times in the education and training of my employees. This has substantially reduced accidents at our hotel.

2. The Tourism Ontario federation successfully lobbied government two years ago to implement a new experimental experience rating program, known as NEER, regarding Workers' Compensation Board premiums. NEER rewards those employers who run safe, accident-free operations with rebates on their WCB premiums. It also surcharges those employers with unsafe operations. I am proud to state that for rate groups 890 and 898, motels, hotels and restaurants, the overwhelming majority of operators received rebates last year, based on 1988, their first year of operation under NEER. Eighty-five per cent of our industry received these rebates. My property was included and I attribute this rebate to the increased safety awareness that THIHSEP provides my employees.

You see by these two examples that Motels Ontario, the Tourism Ontario federation and Ontario's tourism industry have made a significant commitment of time and effort to THIHSEP and NEER. We are very serious about worker safety.

Safe, motivated and happy employees are vital to the operation of our businesses. The single most important segment of our tourism product is customer service. Customer service can only be provided by our employees. They are the most important element of our business. As such, we treat them as co-operative partners.

Now I will address you on stop work. The Ministry of Labour has given to this committee several proposed changes to Bill 208 regarding

stop work. The minister has asked you to consider that instead of the unilateral right of a single certified worker safety representative to shut down a workplace, it may be more appropriate and consistent to make the decision a joint one. We urge your committee's strong support of this.

We believe that the individual's present right of refusal to do unsafe work, coupled with improved worker training about the use of this right, will protect the workers' safety.

In the alternative, a formalized consultation process leading up to a stop-work decision could entail the certified worker representative consulting first with the immediate supervisor, then immediately bringing in the certified management representative where applicable if the situation is not resolved. If the situation is still not resolved, only then would a Ministry of Labour inspector be called in. It is that person who would have the power to stop work.

We are greatly concerned that stop work, as it is presently written in the bill, will move the situation away from the workplace partnership towards conflict and polarization and could lead to great abuse.

Giving a unilateral stop-work provision to a certified worker will not necessarily improve safety performance. It certainly does not support the bill's stated need for co-operation. As we have stressed before, the tourism industry is already in close co-operation with its employees. Occupational health and safety is presently a shared responsibility between employers and employees. This is specifically stressed in the Ontario motel industry where many of the businesses are family-run operations with relatives and friends working at them. This partnership must be preserved, for the tourism industry has an excellent safety record for its operations.

The impact of stop work as presently proposed in the bill could be devastating to tourism businesses. If a portion of a motel's operation or restaurant is shut down, it would greatly affect the entire operation.

The bill currently states that upon receipt of the directive from the certified worker, the employer must immediately comply regarding work stoppage. It is misleading for the Ministry of Labour to suggest that the employer has the final say in implementing a work stoppage. The owner must then wait for the Ministry of Labour's inspector to arrive and resolve the situation. It could be a matter of hours or days in some parts of Ontario.

We recognize that some extremely hazardous occupations such as the mining industry have

negotiated work-stoppage provisions in their contracts with the unions. However, the unilateral right to stop work is unprecedented in North America as a legislated universal practice.

Motels Ontario urges that if stop work must be legislated within the bill, it must be via joint representation; namely, one worker and one employer. It must be a co-operative partnership arrangement.

We do not believe that the penalty for negligent or abusive use of the stop-work power as written in the bill is sufficient; namely, automatic decertification. We also do not agree that peer pressure will prevent frivolous use of the unilateral worker stop-work power.

1120

The Workplace Health and Safety Agency: Echoing the presentation of our Motels Ontario chairman, Colin Malcolm, before this committee in Sault Ste Marie on 25 January 1990, we stress that it is vitally important for nonunionized employees and small business operators to be fairly represented on the board of the proposed Workplace Health and Safety Agency. We strongly feel that a board comprised of big business and big labour is antidemocratic. It certainly does not reflect the Ontario economy and the makeup of Ontario businesses today. It certainly does not speak for the owners and employers of the Ontario tourism industry.

More than 70 per cent of Ontario's workers have chosen not to belong to unions. In Ontario's tourism industry 80 per cent of our workers are nonunionized. Therefore, nonunionized workers should represent at least two thirds of the five worker positions on the proposed 10-person board. Nonworker representation on the board effectively disenfranchises 70 per cent of Ontario's workforce and 80 per cent of our workforce.

We applaud the minister's proposed amendment to the bill that a full-time neutral chair be added to the agency. We also believe the agency should provide for ex officio government representatives, one each from the Ministry of Labour and the Ministry of Industry, Trade and Technology.

Safety associations: As currently proposed in the bill, members on the boards of safety associations must be equally represented, 50-50, between employers and workers. We applaud the fact that worker representatives do not have to be unionized. As we have stated before, 80 per cent of Ontario's workforce in the tourism industry is nonunionized. Any safety association relating to the tourism industry should accurately reflect this in its worker representation.

We believe that representation on the boards of these safety associations should not be mandated through legislation. The Workplace Health and Safety Agency may make recommendations to the safety associations. We also believe that safety associations should be staffed with health and safety professionals and not by a forced distribution of employer and worker representatives.

We applaud the minister's suggestion that such associations have up to two years to make the required adjustments.

Expansion of individual's right to refuse work activity: We believe that the expansion of the individual's right to refuse work will increase the potential for abuse and will have a significant impact on the employer. We recognize the legitimacy of concerns about unsafe work activity, but we do not agree that in all cases the perceived danger of a work activity should result in a work refusal. Standards must be set, in areas such as lifting heavy objects for example, for activities that would be reasonably expected to injure the average worker.

For example, if the expansion of the individual's right to refuse work activity is designed to address lifting, then the proposed wording is too vague. Wording such as "A lifting activity the worker is required to perform exceeds the lifting requirements that are reasonably required in that job and the activity is likely to physically endanger the worker or another worker" should be included.

We urge your committee's acceptance of the government's proposal to define work activity more narrowly in the bill, making it clear that the right to refuse is restricted to current danger. Dealing with the longer-term ergonomic concerns must be through a joint health and safety committee.

Joint health and safety committees: We believe that workers should not be required to be elected to serve on the joint health and safety committees in small businesses in the tourism industry with fewer than 50 employees. This would include all seasonal tourism and hospitality businesses, regardless of size. We also urge the committee to accept the government's proposal to remove the requirement of a written health and safety policy for those workplaces with fewer than five employees.

Conclusion: In a 10 August 1989 letter to our chairman of the board, Premier David Peterson wrote:

"Bill 208 seeks to...build on a growing inclination for employees to create greater levels

of partnership with their workforce, to provide better training to their workers and to give employees more opportunity to use their knowledge and training in ways that enhance the effective operations of the workplace."

Motels Ontario strongly supports this statement. We share the government's goal of providing a safe work environment. However, we firmly believe that the proposed provisions in Bill 208 will not move us towards these goals.

Up until now, safe work practices have been achieved through the co-operative efforts of employees and management working together. Bill 208, as currently written, is contrary to the objectives of co-operation. We believe it will not improve Ontario's safety performance. Instead, we believe it will frustrate the co-operative focus necessary to maintain safe workplaces.

Now, ladies and gentlemen, we would like to answer any questions you have for us to the best of our ability.

The Chair: Thank you, Mr Macies. We do indeed have some members who would like to talk to you: Mr Wildman, Mr Carrothers, Mr Mackenzie and Mr Callahan.

Mr Wildman: I have three short questions. First, I might preface my comment by saying, in response to your view that 80 per cent of your workers have not chosen to join unions, that they have not been given the choice. I also do not understand how a worker could be disenfranchised if he is not already enfranchised.

At any rate, you mentioned the tourism and hospitality industry health and safety education program. Could you tell me, since you are so concerned about the representation by nonunion workers, how many nonunion employees, or union employees for that matter, are represented on the board?

Mr Macies: Right now, on the THIHSEP board we have two representatives of unionized workers, and also Stewart Cooke, who I notice in the room here today. He also sits on it, and Compton Marshall from the Ontario restaurant and foodservices union. I think there are three on the advisory council now.

Mr Wildman: Out of how many?

Mr Macies: Out of a board of 14.

Mr Wildman: Out of 14 you have three?

Mr Macies: But, sir, we have no nonunionized representation whatsoever, as it stands now.

Mr Wildman: I am puzzled, Mr Chairman. If the industry people are so concerned about nonunion people being represented, why did they not voluntarily put them on their board?

Mr Macies: They were not voluntarily put on. They were appointed by the chairman.

Mr Wildman: By the chairman?

Mr Macies: Yes, by the chairman of the occupational health and safety education association. He was the acting chairman. This is just in its infancy stages as a program.

Mr Wildman: Your industry representatives made representations to that individual to get nonunion people appointed?

Mr Macies: As it stands now, we were just in the past few years trying to get the program going and getting our consultants into the workforce to start doing safety training. What we are proposing to do is start funding THHSEP through deductions off the employers' workers' compensation premiums, to fund the continuation of the program. At that time we would change the makeup of the board to reflect the makeup of the employees in the province.

Mr Wildman: How would they be chosen?

Mr Macies: Again, that is still in the works. That is nothing of the concern of the program as it stands now, given it is only in its second year of operation.

Mr Wildman: I see. You said you supported the views of the Canadian Federation of Independent Business with regard to this legislation. Do you support their characterization of Bill 208 as the Ontario union health and intimidation act?

Mr Macies: I do not say it is a health and intimidation act. Our main concerns are just getting equal opportunity for all employees in the industry to have representation on the board. Also, our concern is for the small business in Ontario, which we feel, from the current legislation from federal and provincial governments, seems to be very antibusiness. We feel that because a lot of our businesses are 25 or fewer employees, many of them family run, many of them relatives and friends working there, we are concerned about the polarization that may occur because of Bill 208.

Mr Wildman: Finally, you indicated that if there were going to be shutdowns of workplaces provided for in the legislation, shutdowns which occur because of safety concerns, that they should be joint. That is, the workers should have to consult with management prior to a shutdown, and if there was a decision to shut down, it should be done by both management and workers. Would you not agree that management already has the unilateral right to shut down the workplace, and so any joint shutdown would in fact be a management shutdown?

Mr Macies: Yes, they have the right, as owners and operators of the business, to shut down. What we are asking for is just consultation from the employee to ask the employer to inspect the situation and make a decision based on that. Again, because of the nature of the businesses in the tourism industry—small, family-run places with 25 or 30 employees—we are concerned that it will create a conflict of interest between the present harmonious workplaces that exist now.

Mr Wildman: In that regard then, if there were to be a seasonal shutdown of the business, would you agree that there should be consultation with the workers and perhaps the management books should be opened so workers could inspect the bottom line before a shutdown could take place for a seasonal operation?

Mr Macies: I think seasonal operations are a marketplace unto their own, given the nature of many of the hunting and fishing lodges in northern Ontario. It is up to the operators now to train and make aware the concerns of their employees at the beginning of the year. To have a shutdown at a seasonal operation could be devastating, considering they are only open for six months. I do not really see a need to take a look at the books and bottom line of a seasonal operation, given the fact they have safe working conditions, unless a problem exists.

1130

Mr Wildman: I was talking about an economic—

The Chair: We are going to have to move on, Mr Wildman.

Mr Wildman: It seems to me if it is fair for safety, it is an economic—

The Chair: Order, please. Mr Carrothers.

Mr Carrothers: I wonder if I could continue on a bit with your concerns about the small workplace, get you to expand a bit on why you think the partnership might be being undermined. You are aware that there is an exemption for workplaces under 20. In those situations where there are more than six, or six to 19 employees, then you just have a worker representative or a health and safety representative.

The full force of the structure of the law will not apply in those small workplaces, which in my view is indeed a recognition of the special nature of those workplaces. You have made the point that in many of your businesses they are actually family-run operations. Given that that exemption is in place, can you tell us why you think those small workplaces are going to be undermined?

Mr Gravel: I would like to respond to that, if I may. The majority of tourism businesses, as Mr Macies said, are indeed small operations, under 30 employees, but that is not the exclusive representation of tourism. There are quite a few mid-sized operations out there, and of course there are a lot of large ones as well, the large urban hotels and so forth. In our membership, 70 per cent of the members are small, family-run businesses under 30 employees. We have to speak for the membership in totality. The other 30 per cent do definitely fall under the purview of the bill.

Mr Carrothers: But you had made the point about the small workplaces and you had brought in the image of the family-operated place, suggesting that our legislation was somehow going to disrupt that special nature. I think, if my memory is correct, in general in the province some 90 per cent of the workplaces have fewer than 20 employees. I am just wondering why you feel those workplaces would be disrupted. It seems that this legislation, as I look at it anyway, has a special exemption or a special status for those businesses and gives them consideration. I guess I am wanting you to tell me why what is done here is not good enough.

Mr Macies: I would like to respond to that. I will use our property as an example. We have about 50 to 60 employees in the summertime and about 40 to 50 in the winter. Some of our employees have been with us for up to 18 to 20 years. We have been in operation for the last 50. If you take the tourism industry track record for staff turnover, it is around one to three years. We have fostered a harmonious atmosphere between our workers and we have an open-door policy now where they can come in and discuss with us any problems that occur.

I, as a general manager, more than once a week will have my work clothes on and be down in the pits with the people, in the laundry room, maintenance, shovelling snow, whatever, and it is because of that type of relationship we have now that I am worried, because I have 50 employees, that I may have to sit and have some type of confrontational committee set up now that is going to disrupt the type of workplace we have and fostered throughout the years. There are other places in Ontario that have, again, the 30 to 40 employees who have been around for a long time.

Mr Carrothers: But you are talking about a workplace now which has 50 or 60 or 70 people in it. Do you not have some sort of formal process to discuss safety at present?

Mr Macies: We do.

Mr Carrothers: And why would this change it? I guess that is what I have been—

Mr Macies: It is again an open-door working type of relationship now where I am doing the work that the workers are doing and I see what the dangers are. We are able to correct situations as they occur instead of having a formalized committee set up which is going to polarize the type of relationship we have now.

Mr Carrothers: I guess I am still having trouble. It seems that if you have got that spirit of co-operation, then none of this is really going to disrupt what you are doing. It seems to me it is setting out a process very much like what you do now.

Mr Macies: No, because we do not have a formalized committee now and we do not have to have the types of meetings and committees that are asked for in the bill, and workplace inspections, because a workplace inspection is going on daily.

Mr Carrothers: But you do not have a formal process at all? I mean, I do certainly in workplaces I have charge of.

Mr Macies: You have—I did not hear the question.

Mr Carrothers: Regularized meetings. You normally try to have those in any workplace, do you not?

Mr Macies: We do have regular, organized meetings, depending on certain circumstances, but again it is the type of thing in our operation where we are working hands-on with the people. There is no need to have a formalized meeting to investigate certain situations or accidents as they occur.

The Chair: Final question, Mr Mackenzie.

Mr Mackenzie: How many employees did you say you had?

Mr Macies: We have 40 to 50 in the wintertime and up to 60 in the summer.

Mr Mackenzie: And you do not have a formal—

Mr Macies: No, we do not.

Mr Mackenzie: I am not sure that you are in compliance as it stands at present. I want to follow up on the questioning of my colleague Mr Carrothers. If you have such a good relationship on a personal basis now with your employees, why do you really think that having a formal committee, a certified worker rep in that operation, with much better training, much more extensive training, is going to change that? Is the

relationship so fragile at present that having this additional ability there on the part of the workers would likely be a threat to your operation?

Mr Macies: At our place of operation and other tourism establishments, we are not considered management, we are considered part of a team. We would rather have a team effort than a confrontational type of committee.

Mr Mackenzie: What makes you think it necessarily will be confrontational?

Mr Macies: Our understanding of the write-up of the bill is that it just will cause more formality than we presently have. Formality causes sides which causes confrontation.

Mr Mackenzie: Your organization that you referred to, I want to be sure of the numbers. You say there are 14 members on the board, three of whom are workers.

Mr Macies: As it presently stands, we have two union representatives. Also the chairman and the administration for the office are from OHSEA, the Ontario Health and Safety Education Authority, which is running it now.

Mr Mackenzie: So you have two workers out of the 14-member board.

Mr Macies: No, two workers and we also have union representatives for the food services industry and also the United Steelworkers industry.

Mr Mackenzie: That is out of 14 members on the board.

Mr Macies: Yes.

Mr Mackenzie: Did you recently get another quarter of a million bucks from the Workers' Compensation Board to promote your health and safety programs?

Mr Macies: What we were promised three years ago was funding for five years for the program. We have now just completed our second year and we were informed that we would only get a half-year of funding, which would bring us through to next May. We have just asked the Workers' Compensation Board for full funding for the third year so we can complete the programs that are in place for this coming year. The results of that I have not heard yet.

Mr Mackenzie: That is a quarter of a million, I understand.

Mr Macies: Yes.

Mr Callahan: Just very quickly, on page 5, you say that you believe that workers should not be required to be elected in a tourism industry with fewer than 50 employees. Can you explain

to me why you feel that way? Is it because of the turnover or what?

Mr Gravel: There are various reasons for that. One, because of the co-operative relationship that exists now within the industry, the smaller the size of the business the tighter knit it is. As Mr Macies mentioned, a lot of it really is almost like a family. The turnover is another factor. Mr Macies's business is one of the unusual ones in the industry where they hold their employees for a good length of time. There is a transitional nature in tourism, particularly with the larger hotels, of one to three years.

Mr Callahan: Even in families you have the favourite son or daughter that father or mother might approve over somebody else. I do not buy that. I think election is more democratic.

Mr Gravel: The third factor which I was going to mention is also the seasonality. There are a lot of businesses that are only open for four to six months of the year. When it gets to a small enough size, as Mr Macies mentioned, it starts to engender more of confrontational aspect rather than a co-operative teamwork aspect. With a business under five employees it is quite unnecessary the way the industry is currently run.

The Chair: Mr Macies, Mr Gravel, we thank you for your presentation.

Mr Wildman: Mr Chairman, could we seek clarification from the Ministry of Labour to find out if an operation that has up to 60 employees should have, under the current law, a committee in operation?

The Chair: I could see that one coming. Dr Shulman is here from the Ministry of Labour. He is probably taking notes.

The final presentation of the morning is from the Canadian Union of Public Employees, Ontario division. Gentlemen, we welcome you here this morning. I recognize Mr Stokes. If you would introduce your colleagues, Mr Stokes, we can proceed.

1140

CANADIAN UNION OF PUBLIC EMPLOYEES, ONTARIO DIVISION

Mr Stokes: First of all, I want to thank the committee for allowing CUPE Ontario to talk to you regarding our concerns about Bill 208.

My name is Michael Stokes. I am president of CUPE Ontario. With me today on my left is Michael Hurley, second vice-president of CUPE Ontario and the chairperson of our Ontario division health and safety committee. On my

right is Terry O'Connor, secretary-treasurer of the Ontario division. And our technical adviser and assistant today is Joe Divitt, health and safety officer for CUPE Ontario.

The Chair: Has Mr Divitt ever been called a technical specialist before?

Mr Divitt: More than that.

Mr Stokes: He has probably been called worse than that.

The Chair: Okay.

Mr Stokes: The Ontario division is a legislative body for CUPE's 149,000 members in Ontario. CUPE members work in a wide range of jobs, from nursing homes, hospitals, school boards and municipalities to nuclear generating stations, and for all of us, health and safety is a great concern.

CUPE supports the principles contained in Bill 208. However, we believe there are major weaknesses in the bill. Without the 19 amendments proposed by the Ontario Federation of Labour, little will change and the needless slaughter will continue.

Our members believe—as you should—that the increasing toll of deaths and injuries in workplaces is simply unacceptable. Over the last 10 years, 20 Ontario CUPE members have died on the job. Each one of those deaths could have been prevented if the employers in question had fulfilled their responsibilities under the act.

Time after time, coroners' inquests have found that employers were in violation of the Occupational Health and Safety Act, that they have failed to provide training or proper equipment or that they have ignored specific regulations. As a result, workers have died needlessly.

Let me tell you about Richard Hatfield, aged 58, married to Jenny for 35 years. Richard had two daughters and one son and was a proud grandparent of three.

Mr Hatfield was employed for over eight years with the regional municipality of York as a labourer-driver. His duties were to plow snow in the winter and cut grass in the summer. Cutting grass involved using a tractor with a side mower. The only training for employees in this job was half a day on the tractor with a fellow worker. In addition, without any further training, they were required by the employer to do repairs to the equipment.

On the morning of 5 June 1987 Mr Hatfield had trouble with the tractor and had to repair it. He was kneeling between the frame of the tractor and the tractor's back wheel. It was the practice to leave the engine running so that the hydraulic

system worked. It is believed that on reaching up to move the hydraulic lever, he touched the gear shift and the tractor moved forward. The full weight of the tractor, estimated to be over two tons, came down on his head and crushed his skull.

At the inquest it became evident that the region had no proper training or safety program in place for working on or with tractors or mowers. Maintenance-repair manuals were not at the yard where the tractor and mower were stored. They were kept on file 30 miles away from the accident site.

The coroner's jury found that education and training programs were inadequate or nonexistent, and that there were no proper maintenance and repair procedures in place. This hindsight did not help Richard Hatfield, nor did it help his widow. Jenny Hatfield, unable to accept the loss of her husband, took her own life two weeks later.

On 21 September 1988, 25-year-old Glenn Cripps, a painter with the Dufferin-Peel separate school board and a single father with a 24-month-old daughter, was killed while painting a flag pole. Mr Cripps, along with a fellow worker, was ordered to use a hydraulic lift called the upright lift. It extended upwards like a telescope to 30 feet. At the top is a cage for the operator to work out of.

We learned through the inquest that the only training given was a 30-minute demonstration by the salesperson. The deceased received no further training prior to using the equipment for the first time some 11 months later.

Mr Cripps erected the lift next to the flag pole. On his fourth climb to the top, the lift tipped over and crashed into the ground from some 30 feet in the air, smashing Mr Cripps against the concrete. He was pronounced dead at the hospital.

Testimony at the inquest showed that neither worker had received proper training, nor were they made aware of the risk facing them. At the inquest the controller for operations admitted that health and safety was in fact a low priority for the Dufferin-Peel separate school board.

The Ministry of Labour has laid charges against the school board, the controller and the foreman. They are now working to meet the recommendations of the jury. Most other employers are still waiting for a fatality before they discover that health and safety needs to be taken seriously.

Again, foresight did not prevail, and an avoidable tragedy was the result.

The two fatalities that we have outlined highlight the failure of the internal responsibility system as it exists now. The Ministry of Labour's own advisory council survey of 3,000 joint health and safety committees in Ontario has shown how ineffective the majority are.

In the past six years CUPE locals have had to call on the Ministry of Labour's special advisory group on 144 occasions. This ministry service provides assistance to workers and employers to form legally required committees or to help nonfunctioning committees work.

Thirty-three per cent of our local unions have required ministry assistance to force the employers to establish the internal responsibility framework required by law. Is it any wonder that the system is a failure?

A prime example of that failure is the Toronto General Hospital. It took over five years to get a committee established there. It took an order from the Minister of Labour and then further orders to have his order obeyed. Finally, the hospital challenged those orders through a judicial review on the grounds that they were not required to have co-chairpersons. After two years, their challenge was rejected. It cost taxpayers tens of thousands of health care budget dollars to fund the employer's challenge.

In spite of all of this, the Toronto General still does not have an internal responsibility system established that can deal with hazards. In September 1989 the Ministry of Labour charged the hospital with 25 violations of the asbestos regulation. Workers tried to have this issue resolved through the internal responsibility system, but failed.

Attached is appendix A, which is a document put together by a member of the joint occupational health and safety committee of Local 1230 at the University of Toronto library. If you take time to review the document—it is rather extensive—you will notice that outstanding issues go back as far as 1979. Year after year, issues keep reappearing, highlighting the fact that joint committees are powerless to deal with hazards if an employer refuses to act on the committee's concerns. Keep in mind that this is a university that prides itself on having some of the best academic health and safety programs in Canada, yet it will not address the health and safety issues facing its employees.

Limiting the right to refuse unsafe work by our members effectively denies these workers the ability to defend their health and their lives at work. There is no abuse of the right to refuse. While employers claim there is abuse, the

statistics do not substantiate their claims, nor have they been able to produce concrete examples.

Workers continue to face life-threatening situations and the present law is inadequate to protect them.

You have been told at other hearings that the proposed health care regulations jointly developed and agreed to by management and labour have not been implemented. These regulations would have addressed many of the problems facing health care workers.

In hospitals, nursing homes, homes for the aged, workers have to face violence and sexual harassment from patients and intimidation by their employer. Because they work in a health care setting, employers continually lead workers to believe that they cannot refuse work that, as workers, they believe to be unsafe, in the kitchens, laundry room or with patients.

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For example, in the kitchen at the Guelph General Hospital a worker indicated to her supervisor that the vegetable steamer seemed to be malfunctioning. At the end of the cycle, the supervisor ordered her to open the door of the steamer. In the belief that she could not refuse, she opened the door as ordered, whereupon 10 gallons of boiling water spilled on her legs and feet, resulting in third-degree burns.

Back injuries in the health care field have become an epidemic. In 1987, workers' compensation claims in the health care sector alone totalled \$40 million, and \$20 million of that was for back-related injuries. Bill 208 does not rectify this situation. Health care workers will still be required to put their backs at risk.

Social workers are continually faced with situations that place them in imminent jeopardy. They too are restricted in exercising their right to refuse.

In December of last year a worker with the Toronto Children's Aid Society had to remove a child from his home. When he requested assistance from the police, 18 officers arrived. What the worker did not know when he was sent to the location was that the location in question was, in fact, a crack cocaine house. The police officers could not enter the house without a search warrant. Instead, they had to wait outside and could only enter in the event the worker was physically attacked.

In Hamilton last July, a member of Local 3009, the Hamilton and District Association for the Mentally Retarded had to deal with a client who could fly into violent rages when not given

medication prior to the visits. The worker and her health and safety representative on numerous occasions tried to have the employer address this concern and were ignored. The worker, like others in her field of employment, does not have the right to refuse to be exposed to the ever present threat of attack by their clients. The Ministry of Labour will not address this issue, even though there has been a complaint to the director of the industrial branch of the Ministry of Labour. Eight months later, this problem has still not been resolved.

Daily across this province, social service workers must work with new clients and clients transferred from other agencies who have histories of abnormal or violent behaviour. Yet these workers must work alone, without even the benefit of information to alert them to client behaviour that may endanger their lives.

Throughout Ontario, municipal workers who have the task of plowing our roads are constantly endangered by actions taken by their employers. At one time, the driver would have had the assistance of a wing person to operate the wing and plow as well as act as the driver's second set of eyes. Because of budget cutbacks, drivers working alone must now not only drive their vehicles in the worst driving conditions but also operate the plow and wing mechanisms simultaneously. In addition to working alone, during storm situations many drivers must work up to 12 to 16 hours a day for days in a row. Exhausted drivers are put back behind the wheel after only four- to six-hour breaks, endangering themselves and the public.

In day care centres, workers have to work with children who have lice, infectious diseases or could be violent. The workers are told they must accept such children because the day care act requires it. Yet the workers do not have a right to ensure that their work can be carried out safely.

Even in school boards and universities workers are put into dangerous situations because many of them work alone. There have been many occasions on afternoon shifts when our members have been accosted, harassed or physically assaulted by teenagers who are either drunk or high on drugs.

As a result of another worker death, the most recent issue to resurface in school boards is that of asbestos. Articles in the *Toronto Star* over the past months—and they are attached to the brief at the back—note that the majority of school boards in or around Toronto and Hamilton have failed to comply with the Ministry of Labour regulations on asbestos that became law in 1986. In spite of

ongoing concerns by workers on joint health and safety committees, asbestos is still threatening the lives of workers and students.

We have just discovered that three of our members at the Scarborough board have developed asbestos-related diseases. Both the Ministry of Labour and the board have been aware of this situation since 1987. We recently acquired the information through the Freedom of Information and Protection of Privacy Act, a copy of a 1987 ministry report which informs the board that it has violated the act by not informing the ministry, the union or its own joint committee of these incidences. That is attached as appendix C.

I find it incredible to think that this report and a report from 1988 have been kept secret from us, when you consider that the Ministry of Labour and employer groups continue to claim that the internal responsibility system works. Had we not been alerted to the possible existence of these reports by the media, the coverup would have continued. The question that begs to be asked is, how many more similar situations exist in this province?

This example highlights the failure of the internal responsibility system. As the system exists now, workers are unable to police even the most serious of hazards for which there are clear regulations in place.

The recent asbestos cases are evidence of the failure of the internal responsibility system for inspections. All Ontario schools were assessed for the presence of asbestos in the early 1980s. In some cases, asbestos that the employer claimed was removed was not removed and in other areas the containment programs that were put in place are now breaking down. Obviously, an adequate inspection schedule has not been followed or these conditions could not have deteriorated to such an extent that we are now faced with a second wave of deaths and diseases.

It has been our experience that when all work locations are inspected monthly, not only does the function of the committee improve but so does the work environment. Bill 208 provides for inspections of at least part of the workplace on a monthly basis, with the total workplace inspected in a 12-month period. This is a step backwards. The asbestos experience must surely teach us that inspections need increasing, not decreasing. The act must clearly require that all work sites be inspected monthly, and more often in such cases as the present asbestos crisis.

If we had time, we could spend the rest of the day giving you examples of the failure of the act, the Ministry of Labour and the employers.

However, we would like you to see a message from a victim of those failures so that the consequences are clear and can be weighed against the employers' pleas that they not be further inconvenienced by more health and safety laws.

[Video presentation]

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Mr Stokes: It is sad that this has to take place.

In our brief we have included some conclusions and recommendations for you to consider. I would like to highlight a couple of those. We would ask you to remember people such as the Hatfields and the Crippses when you consider the changes that we say are needed. We request that the committee provide adequate protection for all workers in Ontario, including those in the public sector.

We ask the committee to ignore the suggestions that have been made by the Minister of Labour (Mr Phillips) that the right to refuse an unsafe activity be restricted to mean only back injuries and that the right to stop work by the certified labour representative be restricted only to bad employers. That is clearly not good enough.

We ask the committee to ensure that Bill 208 is amended so that all exemptions to the right to refuse are taken out; that all workers who are affected by a work refusal or an inspector's order or a work stoppage by a certified worker be ensured of wages during the stoppage; that workplace inspections by joint health and safety committees be clearly required on a monthly basis; that employers must respond to all joint health and safety recommendations within seven days; that members of the committee be able to write improvement orders where unsafe conditions exist and that these orders be binding unless rescinded by a government inspector.

I have been in the legislative buildings where you work, where all the other MPPs work. I could not help but notice the security personnel on duty. It seems to me that you enjoy a greater level of security than our members do in their workplaces. I think it is only fair that our members should be entitled to equal consideration.

Another interesting statistic that comes to my mind is the absence of injuries and death in the workplace from among the ranks of management or executive personnel. These are the very same people who are coming to this committee fighting against stronger health and safety legislation for workers in this province and are doing so from the safety of plush offices in

corporate headquarters. Decisions about health and safety in the workplace should be made by trained workers in the workplace, not bureaucrats in fancy offices and boardrooms.

I suppose it is hard for you as MPPs to understand the need for stronger health and safety laws in our workplaces because your workplace is not haunted by the disease and the death that ours are. Correct me if I am wrong, but I do not ever recall hearing about one of your colleagues being blinded, maimed, crushed, poisoned, electrocuted, attacked or otherwise injured while in the line of his work. It is time that you as lawmakers in this province looked at health and safety through the eyes of the workers.

We need Bill 208 and the amendments put forward by labour. We go to work to earn a living, not to die trying. It is time you had the courage to make the changes that are necessary.

The Chair: Thank you, Mr Stokes. We are virtually out of time, but Mr Mackenzie and Mr Dietsch will try to get a couple of questions in.

Mr Mackenzie: This is a key issue and there is no question it is a political issue as well, Mr Stokes. You have asked for this bill, with the amendments moved by the Ontario Federation of Labour. I know that you are one of the unions that agreed to sell your membership on the bill even before we had a commitment to these 19 amendments, but also before we knew that we were going to be asked to support some three amendments and two suggestions from the minister that many of us feel literally gut the bill. Do you see that as a betrayal of the commitment you made to sell your members on Bill 208?

Mr Stokes: You are damn right we do. We made a commitment to sell our members on a commitment to the bill, not to sell out our members on the issue of health and safety. I think it is a crime that this is happening, that this bill is being weakened instead of strengthened.

Mr Dietsch: Mr Stokes, I want to thank you on behalf of the members here for a very emotional presentation. certainly I know and can recognize the difficulty in relationship to working alongside colleagues who get hurt. I, for one member, understand, as I know my colleagues do, the many difficulties in dealing with workplace accidents and injuries. I worked for 24 years on the shop floor, have been injured myself and have watched some of my colleagues lose their fingers, lose three or four fingers, burn themselves, a number of injuries.

I recognize the importance of the additional training that the video so explicitly points out. Referring to you in respect of a stronger

partnership and stronger joint training and education, many of the presenters who have been before us have outlined to us the need for that stronger training and education in the workplace. You obviously support that. In relationship to that being done through joint health and safety committees, I guess I would have to ask you, in relationship to that I presume it is your view that many of the joint health and safety committee members and their worker representation off the floor are probably best equipped to handle some of those very drastic needs and recognitions of those injuries in those workplaces. I would like to have your comments on that.

Mr Stokes: I think we need more in the labour movement than a verbal recognition of what we need. I think we need a commitment from the government to pass laws, not lipservice but laws that protect the health and safety of workers in Ontario. It is the workers in the workplace who are best equipped to determine what is safe and what is not safe.

Mr Dietsch: I recognize the difficulty you have in relationship to Bill 208, as put on the table, and the suggested areas the minister is asking the committee to look at. My very pointed question to you is, do you agree that it is a step in the right direction, the number of additional health and safety committees that are going to be incorporated in the workplaces, the additional training, the participation on the agency and the associations by 50 per cent worker representation, the increase in fines, the trained certified workers, which is particularly important? Do you agree that these are steps in the right direction?

Mr Stokes: No, I do not. Let me give you an example. If your goal would be to jump across the Grand Canyon, I do not think a commitment from the government that fails to reach the other side of the canyon is in any way progressive. You

may be indicating that you are moving in the right direction, but you are not moving fast enough and you are not moving far enough. We do not see this as a step in the right direction when it does not go nearly as far as it must go to be effective. It is incredible to think that you would promote something that is not sufficient, even though it may be better than what other areas of the country have, to workers, when it clearly is not.

Mr Dietsch: So you do not feel it is better than the present act. Many of your other colleagues who have been before you have found fault with it, but have agreed that it has been better than the current act. I guess you do not agree with that.

Mr Stokes: It may be better, but it is not good enough. It is far from being good enough. I do not see how you can say that you are making a commitment towards health and safety when you fail to go the distance. Either get in or get out. Jumping halfway across the canyon you are still as dead as if you only jump a quarter of the way across. We have to get beyond the partway point. We have got to go the distance on health and safety. We have got to pass the laws that are going to protect workers in the workplace.

The Chair: Thank you, Mr Dietsch. Mr Stokes, Mr Hurley, Mr O'Connor, Mr Divitt, I am sure I speak for members of the committee when I say thank you for a brief that was both compelling and thoughtful.

For members of the committee, that completes our morning's hearings. I would urge you to check out of the hotel during the lunch hour. There is a holding room down by the desk where you can leave your luggage. I would urge you to do that.

The committee recessed at 1213.

AFTERNOON SITTING

The committee resumed at 1404.

The Chair: The standing committee on resources development will come to order as we pursue our study of Bill 208, An Act to amend the Occupational Health and Safety Act. We have a full afternoon that takes us right through till 5:30, so we had best get started.

The first presentation is from the Canadian Shipowners Association. Mr Hall, if you would introduce your colleagues, the next 30 minutes are yours.

CANADIAN SHIPOWNERS ASSOCIATION

Mr Hall: My name is Norman Hall. I am president of the Canadian Shipowners Association. With me on my right is Jacques Laurin, our legal counsel with the firm of McMaster Meighen; on my left is Leslie D. MacArthur, manager, marine operations, with the Canadian Shipowners Association.

Thank you for the opportunity of sharing with you our concerns with certain provisions of Bill 208. The Canadian Shipowners Association represents 15 member companies that own and operate 120 ships in the Great Lakes-St Lawrence Seaway system as well as the eastern seaboard, Arctic and international trades. As such, we represent over 90 per cent of Canadian flagships of 1,000 gross registered tons or greater. A list of member companies is attached to the end of this report.

We directly employ between 3,500 and 4,000 officers and crew. In addition, we use the services of between 15,000 and 20,000 employees of various companies that provide our ships with such services as repairs, drydocking, ship stores including groceries, galley supplies and marine hardware, professional services, and port services such as stevedores and grain elevator personnel. As much of our trade takes place on the Great Lakes and the Seaway, many of these jobs are Ontario-based. Thus we are an important contributor to the economy of Ontario.

The very nature of the Great Lakes-Seaway system implies interprovincial and international trading. Cargos are carried between provinces: for example, grain from Thunder Bay to the St Lawrence and iron ore from the Quebec-Labrador region to Hamilton, and internationally: coal from United States ports to Canadian steel mills as well as Ontario Hydro.

Our industry, therefore, has always been governed by federal legislation. The operation of

our ships, for example, is regulated by the Canada Shipping Act and attendant regulations. Many of these regulations address safety and established standards that are enforced by the Canadian Coast Guard and the Board of Steamship Inspection. We enclose a copy of the index of the act and a comprehensive list of the regulations.

In 1987, following revisions to the Canada Labour Code, the marine occupational safety and health regulations came into force, which specifically address the safety of ships' crews.

The development of these regulations involved extensive consultation between the departments of Labour and Transport as well as the industry. The result was a memorandum of understanding whereby it was agreed that the Canadian Coast Guard would act on behalf of the Department of Labour and accept responsibility for the administration of the labour code. Coast guard ship safety inspectors have been trained by Labour Canada to properly administer these regulations, and experience suggests that the system is working well.

Our prime concern with Bill 208 is the proposed amendment that would deem ships under construction or repair to be a project and therefore subject to the provisions of the Ontario Occupational Health and Safety Act.

To our minds, this amendment is neither necessary nor practical. As indicated earlier, we are governed by federal laws and the Canada Labour Code. The administration of safety and health regulations must be carried out by persons who are not only familiar with such rules but also possess expertise in ship design, construction and operations. As well, a second, duplicate inspection system would only lead to costly delays and confusion as separate authorities would have different regulations and interpretations. To our minds, therefore, the Canadian Coast Guard ship safety branch, as the competent body properly trained and qualified to carry out these functions, should remain solely responsible to do so.

Quite apart from the existence of longstanding federal regulations in the marine sector and from the practicality of administering these regulations, there is the question of legal jurisdiction.

Three recent decisions have held that provincial occupational health and safety legislation or regulations did not apply to a federal under-

taking. It was found that their specificity cannot be affected or impaired in any way by provincial legislation. The decisions are the following: *Quebec Occupational Health and Safety Commission v Bell Canada* (1988 1 SCR 749), *Canadian National Railway v Quebec Occupational Health and Safety Commission* (1988 1 SCR 868), and *Alltrans Express Ltd v British Columbia Workers' Compensation Board* (1988 1 SCR 897).

It is our contention, therefore, that the new subsection 1(2), and I quote as follows, "For the purposes of this act and the regulations, a ship being manufactured or under repair shall be deemed to be a project," constitutes an exercise of provincial jurisdiction over a matter or object subject to exclusive federal jurisdiction, so long as the vessel or ship is owned or operated by a federal undertaking.

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Further, if the amendment is made applicable to all ships regardless of their trade, provisions of the act are going to conflict with the provisions of the *Canada Shipping Act* and regulations made thereunder, as well as the provisions of the *Canada Labour Code* on occupational safety and health. To repeat our earlier concerns, it would also create an administrative conflict and resultant undue delay between officials of the coast guard and officials of the *Workplace Health and Safety Agency*.

With respect, we would like to submit a proposal for changes in wording that would avoid any jurisdictional and administrative conflict yet generally achieve the intent of the proposed legislation.

1. In subsection 1(2) we suggest the following wording: "A ship being manufactured or under repair shall be deemed to be a project if the ship is not owned or operated by an interprovincial or international marine transportation company."

2. As other provisions of the act apply to employees in general, regardless of the workplace, a new subsection should be added to section 3 stating that "The act does not apply to a federal undertaking."

We thank you for the opportunity of appearing before you today. We stand prepared to answer any questions you may wish to pose.

The Chair: On page 6 of your brief where you propose the wording, who does that leave? A strictly provincial—

Mr Hall: Right. Yes, I would imagine that there are a number of ships operating in a strictly provincial mode. For example, the *Ontario Northland Transportation Commission* ferry op-

eration and local work boats and tugs and whatever that would be operating within the province. For example, if you are running between Windsor and Sarnia you may be going through international waters, but as long as you are going from one Canadian port to another Canadian port you are really operating provincially.

The Chair: So you would leave those under the jurisdiction of the act?

Mr Hall: Yes.

Mr Carrothers: What law applies now to a ship under construction in drydock? Is it not governed by the provincial safety code at present?

Mr Hall: I think there is a subtle difference that maybe we did not pick up properly here. A ship is a ship once it is launched and delivered by the shipyard.

Mr Carrothers: This was the point, I think, that I just wanted to come at, because in answering the chairman's question you were talking about who is operating the ship, which—

Mr Hall: I would say this: Until the ship is constructed and delivered to the owners, it is not, for the purposes of what we are talking about here, a ship at that point.

Mr Carrothers: All right. So then your comments on federal undertaking and extra ultra vires legislation would relate to the application of this to a ship that is now afloat and operating.

Mr Hall: Yes. Because a ship, once it is delivered, is then a ship and it comes under federal jurisdiction under the *Canada Shipping Act*. It also has to go back to drydock periodically for surveys or repairs or whatever, but it is still a ship and still under federal jurisdiction at that stage. So I would have to agree that until it is built and floating, it is not a ship.

Mr Carrothers: Just for my own understanding, are you saying it is a ship when it is afloat and something else when it is not?

Mr Hall: No, no. What I am referring to is initial construction.

Mr Carrothers: All right. So once it is floated somewhere—

Mr Hall: I am not a lawyer, but once the vessel has been delivered to the owners and it is signed off by the shipyard to the shipowner, it is then a ship. After that, it is always a ship.

Mr Carrothers: Even if it may be taken out of the water for some reason or other, for repairs?

Mr Hall: Even if it is taken out of the water for repairs into drydock, yes, it is still a ship.

Mr Carrothers: Is it that time in the life of the ship that you are concerned about, the potential dual application of this legislation?

Mr Hall: Correct. From the time of delivery after new construction to its demise.

Mr Carrothers: You mention a federal undertaking. By that you mean a federal company of some kind, do you?

Mr Hall: Yes. Well, a federal company—I am not sure that necessarily applies as well.

Mr Laurin: No, it is not necessarily the incorporation that counts. It is really the nature of the activities. Is it operating interprovincially or internationally? That would be a federal undertaking.

Mr Carrothers: You mentioned Ontario Northland ferries. When they are afloat, are they not under the jurisdiction of the coast guard the way any other ship is?

Mr MacArthur: Yes, they are. It is technically under provincial jurisdiction. However, the operators have elected to have the ship inspected and controlled by the federal undertaking: the coast guard. The reason for that is that it obviously avoids the duplication of standards and it also avoids the duplication of services. Technically, all the Ontario Ministry of Transport ferries and Ontario Northland could be claimed to be under provincial jurisdiction.

Mr Carrothers: Is that because the province is the owner and operator and therefore it the crown that is doing it, or would an Ontario company operating a set of ferries come under exclusive Ontario jurisdiction as well?

Mr MacArthur: No. The British North America Act specifically exempts intraprovincial ship operations from federal jurisdiction. So that is a ship plying from one area to another. In fact, the British North America Act specifically applies to intraprovincial ferries: it mentions intraprovincial ferries.

Mr Carrothers: I guess I am getting more confused as I go. I always thought it was the coast guard that was hauling me over when I was out in my boat.

Mr MacArthur: The custom is that the coast guard has done all that; they do inspection. I guess the Ontario government has always recognized that the coast guard are the experts on this and that it is better for them to do it rather than have various provincial authorities do it.

With a few exceptions, I think in a few Nova Scotia Department of Transportation and Com-

munications ferries, all the government-owned ferries are inspected by the coast guard.

Mr Carrothers: Just to conclude then, essentially what you are saying is that you have no problem with the provincial law applying until the point when the ship is commissioned, and then once that point has gone on, you would like the federal to apply. Is that essentially what you are saying?

Mr MacArthur: Until the ship is capable of navigation, it would remain a provincial responsibility.

Mr Carrothers: The workplace, so to speak.

Mr MacArthur: Yes.

Mr Dietsch: Supplementary to that: As I understand it, you are indicating that when a ship is under construction or at the point where it is still being built before it becomes a ship, as you refer to it, that should be covered under the provincial regulations. What is the difference between it in that particular phase of construction and when it is pulled up on drydock and undergoing a considerable amount of refurbishing? What do you view as the difference?

Mr MacArthur: The problem when a ship goes into drydock would be where the ship would be under two jurisdictions if it were partly under provincial jurisdiction, because there would always be a crew on board who would remain under federal jurisdiction. For the same reasons as we discussed with the safety inspections on the ferries, the coast guard are there. They have the expertise and it is better that they continue to be left with that responsibility.

Mr Dietsch: Are you telling me that there is always a coast guard crew on board even, for example, on a ship that has pulled up on drydock and is going to be under repair for a long period of time?

Mr MacArthur: I would prefer not to use the word "crew." It is always under coast guard supervision and the inspection is always done by the coast guard. There would be a certain number of the owner's crew on board who would be representing the owner in any repairs that were being done.

Mr Dietsch: I guess I fail to understand. I recognize there is always a crew for the owner on board, but I guess I am more concerned, in relationship to this particular act, with protecting the workers who are working on that project. Where are they responsible to? Another group that was before us in relationship to this particular issue indicated that they did not have a problem with its falling under Ontario's Occupa-

tional Health and Safety Act if it was in drydock. Where they had difficulty was when the repair crew came on board and then travelled with the vessel to go to another place during which repairs were made afloat, and I am talking minor repairs as opposed to what the ship would be in if it were in drydock under major repair.

1420

Mr MacArthur: There is one thing that you said, sir, that rather disturbs me because it gives me the impression that you think that if they are not under provincial jurisdiction they are not under any jurisdiction.

Mr Dietsch: No, I did not say that.

Mr MacArthur: That is not the case. They would be under federal jurisdiction. They would be covered by the federal Canada Labour Code. Therefore, they would be covered and protected in just the same way as any other crew member would be. Does that answer the question?

Mr Dietsch: I am still not clear. You told me that you did not think there necessarily would be a health and safety committee with respect to the coast guard on board during the phase in which it would be in drydock. It would still be under their responsibility and I can appreciate that. What we are proposing under this particular legislation is that there would be a committee on board that would deal with the health and safety concerns of the workers that were currently there while it was undergoing this kind of repair.

Mr MacArthur: There are health and safety committee requirements under the Canada Labour Code in just the same way as there are under Bill 208 or whatever the provincial equivalent is. It may be that some modification would have to be to accommodate shore workers in that case, but I do not think that that requirement would justify having two regimes applying to the same ship at the same time or that the ship would be subject to one regime at one period in time and another regime at another period in time. There has to be some sort of continuity with the ship and the regulations that are applied.

I have to admit that perhaps the matter of health and safety committees has to be looked into further, but I do not think that is justification enough to apply another code.

Mr Dietsch: So your major concern, as I understand it, is basically the duplication of what areas the shipowners would have to fall under while the ship is in repair.

Mr MacArthur: That is right. With the possible conflict that could result.

Mr Dietsch: If there was an understanding with the federal Canada code, would that satisfy your concerns?

Mr MacArthur: Yes. As long as it was the Canada Labour Code that applied.

Mr Dietsch: You are going to have to tell the members of the committee and me particularly what makes the Canada Labour Code so special that it should fall under that area.

Mr Hall: If I might, as we have indicated in our brief, we are a federally regulated industry and have been for some time. Getting back to the comments that Mr MacArthur was making, as we have indicated, even when this part IV of the Labour Code came up a few years ago, we were heavily involved with the Department of Labour and the Department of Transport to try to come up with something at that point that would not lead to duplication between those two departments in having two inspectors aboard.

It was agreed, as we have indicated in the brief, that the coast guard inspector would be trained and has been trained to look after the rules and regulations pertaining to part IV of the Labour Code. When you get right down to it, once a ship has been contracted with a shipyard—let's talk about a brand-new ship, let's go back to basics, the beginning—once that ship is given a hull number, then she is under federal jurisdiction because the coast guard inspectors are going to be following it very, very closely to ensure that she is built to Canadian and international standards and that everything that is in that contract is going to be adhered to. When she does go in for drydocking or a refit of some description or a conversion, whatever may be going on, the coast guard is there, and as we have indicated, the coast guard has the responsibility now, by law, to look after the interests of part IV of the Labour Code.

The Chair: Mr Dietsch, I wonder if it would be helpful, when we begin the clause-by-clause debate, if we asked our Ministry of Labour people to bring to us an opinion on this matter since it is quite legalistic and deals with overlapping jurisdictions. Okay, thank you. Mr Mackenzie.

Mr Mackenzie: I still have some difficulty in understanding just exactly what you mean here. It sounds to me as though you do not want a ship whether it is under construction or under repair to be deemed a project and thereby covered by this act. Am I right?

Mr Hall: That is correct, sir, yes.

Mr Mackenzie: I have difficulty in understanding your rationale for that. Is it your contention that the coast guard is more stringent than the provincial ministry would be? How can you justify a coast guard official or officer or inspector having more experience or knowledge or being more competent than the workers actually in the shipyard or the drydock who are doing the work?

Mr Hall: Well, basically the coast guard ship safety branch has been in existence for quite some time. It has a considerable amount of experience in the knowledge of ships, ship operation, ship construction and ship design, and I would think it would be far better to have someone who has that kind of knowledge and talent involved in ensuring the safety of the people on board ship because he understands what a ship is all about, as opposed to someone who has not been involved in ship construction and therefore would not understand some of the problems.

Mr Mackenzie: It seems to me that there would be a number of workers in a major shipyard, and we probably do not have that many of them left, who would be doing a lot of jobs in that shipyard that would not necessarily relate directly to the vessel either.

Mr Hall: I agree with that, sir.

Mr Mackenzie: It raises the whole question of whether or not a shipyard, whether it is during the construction of a new vessel or the repair of a vessel, really is a work site or a project.

Mr Hall: Well, as I think was indicated earlier, certainly when you get into the new construction phase of things, as opposed to an existing shipgoing in for repairs, I would think there is a very valid point to say that there is dual responsibility. But there will be coast guard people there ensuring the design and construction of the ship and that safety standards are met.

Mr Mackenzie: When are they there? Are they there all the way through the construction or repair of a ship or are they in on specific investigations or checks or what have you?

Mr Hall: I think it depends on the amount of work being done. In some cases—major shipyards, as you referred to earlier, have coast guard inspectors who are there constantly. They are based at that yard.

Mr Mackenzie: It would be interesting to find out how many shipyards we have that have a full-time coast guard safety person on the site all of the time, if we can, Mr Chairman.

Mr Hall: Times have changed. In the good old days, when there were a lot of yards and there was a lot of construction going on—I know, for example, when Collingwood was going, it had a few coast guard people stationed there permanently. I would expect that the same must apply to Port Weller and Thunder Bay.

The Chair: Are those the only shipyards?

Mr Hall: Port Weller is the only real building yard left in Ontario. Thunder Bay is a repair yard basically. There is a drydock, etc, but they do not build ships there.

Mr Dietsch: I just wanted to ask one further question in relationship to what Mr Mackenzie was talking about, and where I was going next was in relationship to the difficulty in determining—I am very familiar with the Port Weller drydocks and I know that there are from time to time ships that are brought right up in drydock, not necessarily just land but right out of the water for repair.

The difficulty, of course, is in handling the transition of manpower between the buildings that are there doing fabricating and then going into the ship for repair. As one instance of what you are talking about, in the building they are under the Ontario Occupational Health and Safety Act, and when they take the part out to put it in the vessel you are suggesting that they be under the coast guard and under the Canada Labour Code. Can you see the dilemma there? I am just wondering in relationship to what you are asking the committee to look at.

1430

Mr Hall: I see the dilemma. I guess the problem I have, and you mentioned it yourself, is that I would be concerned if we were getting into a situation where there was duplicity. I would be worried that different people are going to come up with different interpretations as to what is going on or how safe is safe, that type of thing.

I would defer to the opinion of the Canadian Coast Guard. We have dealt with them all our lives. They are constant because the same rules apply from Vancouver to St John's. We know what the rules are, we know what is to be expected, but if we started getting involved with that set of inspectors and that set of regulations and 10 different provincial regulations, it could be very difficult.

Mr Dietsch: That is why I asked the question in relationship to working out some type of an operational scheme between the two levels of government in order that there are clearer guidelines on where it is going.

Mr Hall: Yes, I think that would be reasonable.

Mr Callahan: Just very quickly, if what you are saying is correct, then why should people servicing an Air Canada jet or a Canadian Pacific jet be covered under this legislation once they go on to the plane? What you are saying is that we do not have jurisdiction to do it, but I think I will leave that to the labour officials to grapple with. But I cannot see that, because if that is the case, then it means that with anything that is within provincial jurisdiction, planes, trains, when the guy leaves the ground, the provincial territory, and goes into the train or the plane, he loses the benefits, assuming there are benefits—some people may disagree with that—in Bill 208. That, to me, makes no sense. The field has been occupied by the federal government, but I cannot believe that would ever be the intent of the legislation.

Mr Hall: I would have to agree in principle with what you are saying. I cannot speak for the air industry or the rail industry. I just know from past experience what goes on in marinas.

Mr Wildman: I just want to give Mr Hall the chance to clarify a comment he made earlier. He said he did not want to see duplicity. Did you mean duplicity or duplication?

Mr Hall: Duplication.

Mr Fleet: He was looking over that way, though.

The Chair: Mr Hall, Mr MacArthur and Mr Laurin, we thank you very much. In particular we appreciate the specific nature of your suggestions and we will look at them in our clause-by-clause debate. Thank you.

The next presentation is from the Public Service Alliance of Canada, PSAC. We welcome you to the committee. If you would introduce yourselves, we have 30 minutes to hear from you.

PUBLIC SERVICE ALLIANCE OF CANADA

Mrs Hurens: Thank you, Mr Chairperson. First of all, I would like to introduce Mme Louise Hall, who is our health and safety section head officer. My name is Joane Hurens. I am the vice-president of PSAC, responsible for health and safety. It is PSAC, please, not peesack. You have received the original copy of our submission. With your indulgence, I will make a verbal presentation.

On behalf of the 170,000 members of the Public Service Alliance of Canada, I really welcome this opportunity to appear before the

standing committee on resources development during your study of Bill 208. Our purpose in appearing before the committee is twofold.

First, we should like to place on the public record our firm conviction that Bill 208 does not adequately protect the health and safety of our members and all workers in Ontario. Second, as an affiliate of the Ontario Federation of Labour, we should like to add our support to the official position vis-à-vis Bill 208 being advanced by organized workers.

That said, although the alliance represents over 80,000 workers in Ontario, only a small number are covered under the scope of the Ontario Occupational Health and Safety Act. Nevertheless, there is no mystery about the hazards faced by our members on a daily basis. In the course of their work, our scientists, laboratory technicians, security guards and office workers, our members, confront the many risks of the modern workforce, the increasing use of new chemicals, biological agents and technological changes.

In any given year the direct and indirect costs of workplace deaths, injuries and illnesses are in the \$10 billion range. The introduction of Bill 208 provides the government of Ontario with an opportunity to bring down and even end the unacceptably high number of workplace accidents and fatalities.

Yet the bill must be strengthened if this desirable, even essential, result is to be achieved. To this end, in our formal submission to your committee, the alliance provides commentary which leads to amendments to Bill 208 that we believe will enhance the system of workplace health and safety in Ontario.

Specifically, the alliance believes that the Workplace Health and Safety Agency must be bipartite and co-chaired by labour and management if it is to foster greater co-operation between labour and management. By providing a neutral chair for the agency, Bill 208 will, in the alliance's view, undermine the full partnership of labour and business in the development and administration of the province's health and safety system.

More important, from our perspective, an effective health and safety system must include the right, without condition, for individual workers to refuse unsafe work. By restricting the right to refuse through Bill 208, the government is placing workers at risk, notwithstanding the fact that workers have not abused this right in the past.

Alliance's members working for the federal public service under the Canada Labour Code, part II, cannot refuse unsafe work if the danger is inherent in the work or is part of the normal condition of work. The word "inherent" in their collective agreement means "employment risks normally related to a specific task, trade or occupation. In such cases, an employee shall be qualified through knowledge, training and experience, to perform the assigned work and wear or use the prescribed protective devices and equipment."

This means that a worker not adequately trained to lift can refuse the work if unsafe. Our members have not abused the right to refuse unsafe work because of the clause in their collective agreement. Hence, there is no rationale for restricting the definition of "activity" in Bill 208 if there is an honest interest on the part of the government to prevent injury, illness or death in the workplace.

Of equal importance, certified members must enjoy the right to stop work, particularly since management currently has a unilateral right to do so. To be blunt, if the government believes in fairness, then Bill 208 must guarantee the balance of power between labour and business. In this regard, we remind members of the committee of the abysmal accident statistics in Ontario which serve to prove that health and safety cannot be left to employers.

In order to ensure that workers are not intimidated into working in environments that are clearly unsafe, workers must be guaranteed full wage and benefit protection in the event of work loss as a result of danger. Moreover, the law must be strengthened to ensure that employers who take reprisals against workers who have acted in accordance with the law are prosecuted.

From the alliance's perspective, Bill 208 should be strengthened to promote prevention of workplace accidents in addition to providing workers with the right to refuse unsafe work and ensuring that workers are paid in the event of a work stoppage. All members of joint health and safety committees should come from the workplace. Similarly, joint committee members must be permitted to inspect the workplace at least once a month. We take the position that this is absolutely essential because no workplace is free of risk. Moreover, the vast majority of accidents and illnesses are preventable.

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With regard to joint committees, the alliance believes union representatives should have a legislative right to bring technical advisers into

the workplace and joint committee meetings. The adoption of such a provision would equalize somewhat the balance between management and union representatives on joint committees.

Finally, the alliance believes that joint committees should be taken seriously. One substantive and concrete way that the government could ensure the committees are effective is to require employers to respond to committee recommendations within seven days.

The alliance's experience is that recommendations to workplace safety and health committees have been on the agenda for one or two years. The inevitable question that comes to mind is, is the employer waiting for a disaster or a catastrophe to resolve the concern? This is not acceptable and a time limit is necessary.

Before concluding, I should like to comment briefly on the testing of chemicals entering Ontario.

More than 55,000 chemicals are known to be in our workplaces, of which about 613 are controlled (13 designated substances in Ontario and 600 toxic chemicals for which exposure limits are set in regulation).

Many more new chemicals are introduced into the workplace every year. For too long, governments have been taking the word of chemical and drug companies that their products are safe. Experience has proven that the trust placed in certain companies has been violated both by the companies and testing laboratories. For example, the United States Environmental Protection Agency, EPA, has discovered deficiencies in pesticide safety tests.

A responsible government cannot take a chance on whether the chemicals will cause harm or not. The cost of repair involves long-term planning, justifying in itself that all chemicals be tested before entering the workplace. Thousands of workers have died from asbestos diseases. These deaths are not accidental.

The alliance urges the government of Ontario to take the lead in ensuring that all chemicals entering the workplace are tested. The alliance believes this government can play an important and lead role in ensuring that the federal government establish its own facilities and work with the provinces, to take testing out of the hands of the chemical manufacturers and set standards limiting human exposure to dangerous substances in any workplace in Canada and Ontario.

Finally, the alliance believes that the role given to certified members must be improved if they are to effectively arrest the incidence of

accidental death or injury. In our formal submission, the alliance argues that the right to stop work must be unconditional, and expanded to include reasonable grounds to believe that an immediate danger may not be a violation of the law and regulations because many dangers are not addressed in specific laws and regulations.

Similarly, Bill 208 must protect certified members who use their right to stop work from any disciplinary action.

The Chair: Mr Callahan had a question.

Mr Callahan: I notice on pages 4 and 5 that you have raised an issue which other groups have raised, that to employ a neutral chair will alter the bipartite nature of the agency and destroy the equality and balance of the partnership.

I asked the question of a group earlier, what would you do if the agency, let's say particularly on a very sensitive issue—let's say it was moving to decide that a certified worker had unlawfully stopped work—what if it reached an impasse and could not decide one way or the other? How would you propose that be dealt with in the absence of a neutral chair?

Mrs Hurens: Well, you see, first of all, probably like the other labour people here, we have difficulty believing in the neutrality of a chair and certainly it would prevent either side—it would stop them working together. It will not force them to work together. In the instance that you have given, maybe Louise, you can comment on it.

Mr Callahan: I appreciate the reason for it. That has been stated before. I mean, what I am saying to you is, if this agency, in one of its duties under the act, is hearing a factual situation to determine whether or not a certified worker has stopped work or ordered work stopped improperly, and this person is subject to losing his certification if the issue goes against him, you have got the two people on the agency hearing it and you do not have any third party, how do you get a decision?

Mrs Hall: I think further on in our brief we also talk of an appeal board or a system by which that would be established.

Mr Callahan: Okay, so your concern then, and I think there was the concern of the other group, was that because the decision is final and there is no appeal from it, you are concerned about the neutral third party. Is that right?

Mrs Hall: We are also concerned with the fact that we believe that if we are going to have a balance of power, it is between employers and employees, who are the most vested parties

under this legislation. To have a neutral party would alter the balance. So we believe that would not be equal.

Mr Callahan: You might also get stuck with a nondecision, because one is finding one way, the other is finding the other way and there is no third party.

Just finally, I have not had an answer yet and I do not know one myself, I cannot understand what you do, but I would like the Ministry of Labour people to investigate whether or not the provision that a decision is final under that section 23c, whether or not it is contrary to the Charter of Rights and Freedoms, because under at least one of those terms of reference the agency has the power to take away from an individual a right the individual has acquired under the act. They are acting as judges or quasi judges. It would seem to me that under the charter these days, if you are doing that, you are taking away a right. Then you cannot say: "That's it. You don't get any appeal." So I would like to know that. We may as well find it out now rather than have somebody challenge it later on.

Mrs Hall: There should also be a provision to protect those certified members against any reprisal, dismissal or whatever, because you are looking at the fairness of it. So that should be in the law, too, to protect these people who are really acting in good faith.

Mr Callahan: I think there is in the act, is there not?

Mrs Hall: Well, there is, but we want it for the certified members as well, that it be very clear, because you are talking about fairness here.

The Chair: I gather your request is to the legal branch of the Ministry of Labour.

Mr Callahan: I think they know what I am talking about.

The Chair: They are nodding sagely. I think that probably is a good sign. Mr Wildman.

Mr Wildman: I would like to ask a couple of questions. One, would you agree that the argument over legislation regarding occupational health and safety and the right to stop work is essentially an argument over power in the workplace? And who should have the power to protect workers' health and safety; should it be a unilateral management power or should workers have some power over them?

Mrs Hurens: Definitely, since we are talking about the health of the workers primarily, they should have a strong say and that is why we insist so much on the balance of power. Based on experience, anyway, on the Canada Labour

Code, that right has not been abused and why do we not base it from there? If there is any abuse, there will always be some time to change it, but we cannot base a project on something that has not happened yet.

Definitely the workers need their say. That is why we need, basically, health and safety legislation. Definitely we cannot count only on the employers to do that; what we had in the past proved that the employers are not always careful and care about the health and safety of the workers. That is why we have that type of legislation.

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Mr Wildman: One of the recommendations of another presenter this morning, who also represents public sector employees, CUPE, was that the single penalty disbarment for life for a certified worker found guilty of frivolous conduct is grossly unfair. They said an impartial appeal board should be allowed to decide on the length of the penalty. I take it from your presentation that you would agree with that position presented by the other union.

Mrs Hall: We support that to a point. I guess what we are saying is, is there really a need to penalize and discipline workers in cases like that? I think it is the same thing as with committees. People who are on committees act in good faith. Part II of the Canada Labour Code, for instance, protects workers against reprisals, or whatever. I think the same thing should apply for certification and decertification.

Mr Wildman: The only other question I had was in regard to comments you made earlier about the requirement for management to respond to a matter raised by the joint health and safety committee, and you are arguing it should be not 30 days, but rather seven days. Then you said that you had examples of cases where a matter had been on the agenda of the committee for one to two years without any action. Is this happening often or is this just an aberration?

Mrs Hall: This is an ongoing experience within the federal system, for instance, specifically with departments, as well as crown corporations, where we have items on the agenda that go on and on for ever and they do not get resolved.

Mr Wildman: Is not one of the problems in that regard under the current legislation that applies, whether it be federal or provincial, if the inspector comes in and a worker raises a concern about something and the inspector says, "Is it being dealt with or is it before the joint health and safety committee?" and if the reply is, "Yes, it

is," then the inspector says, "Okay, it's being dealt with," and does not respond?

Mrs Hurens: There is a real difference between its being dealt with and discussed. You have certain recommendations that require some investment or change or repairs that cost money, and what we are saying is, if there is a danger it should be corrected in a very timely fashion to avoid accidents or to avoid certain diseases. It has been dealt with, yes, it has been raised to the committee, but between raising the issue and solving the issue there is a difference and that is why we want to put that seven days' recommendation.

Mrs Hall: If I can add to that, too, I think that the same thing applies for Ontario as with the federal government, which is the internal responsibility system. There are not that many inspectors who are out there who will respond to these calls. Their priority is refusals. They will come out for these things if they really have to. So it is not being corrected and that is a serious problem.

The other deterrent we have is that the committees have no powers, and until the committees are given powers that will not go. We go back to the Royal Commission on Economic Union and Development Prospects for Canada, the Macdonald commission, which clearly stated, not too long ago, in 1986, that committees had to have more powers if they were going to be efficient and some of these things would be corrected.

Mr Wildman: That is why I raised my first question about the issue of power. Just parenthetically, I would point out that anyone who has observed you operating today would understand that there is no such thing as a neutral chair.

The Chair: Thank you anyway, Mr Wildman. Mr Fleet.

Mr Fleet: How many of your members would fall under the existing provincial act?

Mrs Hurens: Approximately 100 members. Maybe you could clarify that. But we came here not only to support the Ontario Federation of Labour and also to represent the 100 members we represent but, on the other hand, we are really concerned with the domino effect that that kind of legislation could have within other provinces and also on the federal government. After all, this is a major province and a very important province and if you go one way, in one direction, definitely it has a domino effect. That is our concern and that is one of the reasons we are here. If you want to have some details on the—

Mr Fleet: Just to get sense of who they are and what they do.

Mrs Hall: I think a good example is the Forintek Canada Corp members that we have who are in a lab, and mainly here in Ottawa. They have had a committee for years, not that efficient, but they have had a committee. Recently they are going through cuts, downsizing, and as a result of that the committee has fallen apart because the morale is so low. We have scientists—

Mr Fleet: Do they fall within provincial jurisdiction?

Mrs Hall: That is correct.

Mr Fleet: Why do they fall under provincial jurisdiction, as opposed to—

Mrs Hall: It is a federal crown corporation, which a few years ago was sold to the province and it was privatized.

Mr Callahan: Privatization.

Mrs Hall: You've got it, sir.

Mr Fleet: I would like to ask—

Mrs Hall: Then up in Moosonee we have the Ralson Construction and the Moose Band Development Corp. So we have caretakers there, cleaners, within the hospital, and security guards. There are no committees that we know of.

Mr Fleet: I want to just clarify the position. You have alluded to the fact that you are concerned about a domino effect, as you have called it. You have indicated on page 5 of the brief that the provisions you have under the Canada Labour Code say what you cannot do. You "cannot refuse unsafe work if the danger is inherent to the work or is part of a normal condition of work." I am not quite clear what the other side of the coin is. What provisions are there under that code that allow you to refuse dangerous work?

Mrs Hurens: First of all, the right to refuse is allowed for the majority of our members. But if you take, for example, correctional officers or firefighters, where the work they perform is inherently dangerous, we are saying these members need training and good employers' training in order to perform their work. They would have the right to refuse under very, very exceptional circumstances, or the right to refuse work that is not linked to the work they normally perform.

Mr Fleet: You say that there is a right to refuse. That is an individual right to refuse.

Mrs Hurens: Yes.

Mr Fleet: One thing that struck me about the presentation was that there was not a direct comparison of the right to refuse federally and the right to refuse under the existing act or as proposed under Bill 208. If it is possible for you to outline exactly what the right to refuse is for the ordinary employee in your union, that would be helpful to the committee.

Mrs Hall: I guess the point we are making in our brief is around the activity and the recommendation of the minister to withdraw, or to amend Bill 208 to allow for refusal in advance of activities. Under part II of the code they define what a danger is and the interpretation of that by Labour Canada is that if there is an inherent hazard, then that is part of the job. An example would be our correctional services people. It is part of their job to work in prisons and it is part of their job to be involved with violence. What we are saying is that in the collective agreement with the employer, the Treasury Board, we had that redefined to include activity, and that is what we give you in here. So where there is a refusal over lifting because proper equipment, a lift, is not provided or training has not been given, that is an activity and it has been recognized in the collective agreement.

Mrs Hurens: Normally the members do have the right to refuse. I will give you a couple of instances. We had about 35 members who refused to work in an environment that had no oxygen; the level of oxygen was very low. It was granted and it was recognized by the Labour Canada inspectors. They were ordinary people, they were people working in an office. That is the type of refusal that they are going to exercise. Another example would be with chemicals. If the employer was going to install new carpeting or using a kind of very toxic glue, our members might be required, of course, to work, but they could exercise their right to refuse in these circumstances—any danger.

We made exceptions for the bargaining units that have danger inherent in their jobs; otherwise they have the right to refuse with no reprisal from the employer.

Mr Fleet: It sounds as if the provisions under the Canada Labour Code and the current act are very similar in terms of their impact, because the existing provincial act allows for refusal if any equipment or workplace condition is going to endanger a worker. It is worded quite broadly in the current act. The proposal that has come forward is to add "work activity," but then an additional proposal for consideration of the

committee is to add the word "immediate" but only to the additional provision under Bill 208; it does not detract from anything in our existing act. I appreciate that the approach taken under the Canada Labour Code is a little different in terms of the wording, but generally speaking it sounds like they are aimed at the same objectives.

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Mrs Hall: If I can elaborate on that, we do not agree with the Labour Canada definition of "danger" and "refusal." This is why we went to the collective agreement, to clarify and to include "activity" by its definition that we outline in here. That is what we want to see also included in the definition of "danger" under part II of the Canada Labour Code. We are looking at "activity" right now.

Mr Fleet: How do you deal with the problem of a repetitive strain injury? Let's say somebody is working at a keypunch entry job and there is something about the design of the equipment. Is it your understanding that under your agreement there is a right of that worker to say—because it is obviously part of the job, it is the nature of the job—they have a right to say, "This is now dangerous and I am going to stop now until you replace the equipment"?

Mrs Hall: That is the same principle that we have defined here. The proper design of the workplace has to be provided, otherwise the employee, the worker, has a right to refuse that activity if it is going to harm the elbow or the wrist of that person. It has got to be in place. It is the same thing with other situations. If workers are not properly trained to lift then it becomes a dangerous activity, so it is a matter of training and knowledge and having the equipment necessary.

Mr Mackenzie: Would the alliance agree that the reason we are trying to develop Bill 208 is because the internal responsibility system simply has not worked, an argument that has been made by many of the groups before us, and that is why the need for this legislation?

Mrs Hall: That is certainly our belief, that it is not working. We need more inspectors out there to ensure that the law is not violated and to ensure that the hazards are corrected. It has not worked in the federal system any more than it has in other provinces. When we look at the statistics of injury, death and illness, I think the evidence is there.

Mr Mackenzie: Do you agree that the neutral chairman, the restrictions on the certified worker's right to stop an operation and the redefinition

of "work activities" are three forceful reasons why the internal responsibility system still will not work if those are the amendments we have in this legislation?

Mrs Hall: That is correct, and I think we have that reflected in our brief.

The Chair: Thank you very much for your presentation to the committee.

The next presentation is from the Ottawa-Carleton Home Builders' Association. Robert Sanscartier, welcome to the committee this afternoon. We have 30 minutes for each presentation and the next 30 minutes are yours.

OTTAWA-CARLETON HOME BUILDERS' ASSOCIATION

Mr Sanscartier: First of all I would like to thank you for giving me the opportunity to voice my personal concerns and those of my fellow members of the Ottawa-Carleton Home Builders' Association regarding the impact that Bill 208 will have on our industry.

Our association represents 365 member companies involved in Ottawa's residential construction industry. We build approximately 90 per cent of the area's housing, and we are a mainstay of the local economy. All of these companies share concerns about what Bill 208 will mean for the industry.

My name is Bob Sanscartier, and I am president of S and S Electric, a company that I founded in 1973 at the ripe age of 22. I remember when I started on my own I had an old, secondhand Econoline van which I used as a service truck and a warehouse, and quite often as an office. At the time I worked alone because I could not afford to hire help, but I had a dream of being successful as my own boss and building a reputable business that would employ people. I sincerely felt that this province provided the opportunities to attain my goals and objectives.

As it turned out, this province gave my business the chance to grow and prosper to the point where now I employ approximately 40 full-time, nonunionized people. It has also allowed me the opportunity to diversify into the plumbing business, where I employ 10 full-time, nonunionized employees. I am proud to say that I have employees who have been with me for 16 years, others for 14 years and so on, without ever having been laid off work. So you can see that I have reason to believe in a system where opportunities exist for anyone who has a dream.

I believe very sincerely, as well as the majority of small- and medium-sized business owners, that we as employers have a moral obligation to

our employees, that of giving them the opportunity of earning a good and honest living for themselves and their families. We as employers have a more important obligation to our employees, that of ensuring that they be provided with safe work sites and the proper equipment so that they also may return to their families safe and healthy.

I can say with true confidence that most small- and medium-sized employers could not live with their consciences knowing that they were responsible for a serious injury or, God forbid, the death of one of their workers. In the two businesses that I operate, my staff can boast of having worked 450,000 man-hours without any lost-time injuries. There are many more businesses that can boast of such a feat.

At my place of employment, both labour and management work together in promoting safety on the work sites. At S and S Electric and Orleans Plumbing, we believe in safety education, in instilling in our employees' minds the importance of working safely and making them understand that by not working in a safe manner they are not only placing their lives in danger but also the lives of their co-workers. We have implemented at my office a safety policy manual that was, as a matter of fact, provided to us by the Ontario Home Builders' Association. This manual is given to each worker, new and old, for him to read. Each employee, after having read the booklet, has to provide us with a signed acknowledgement that he has made himself aware of our safety expectations and that he will abide by the rules set out in the safety policy manual.

It is in the job description of superintendents and site foremen to make sure that all workers follow these rules, and they are given the power to take action against a worker who does not play his part in his own safety and the safety of his co-workers. For example, if an employee shows up for work without the proper protective equipment, he is not permitted on the site until he has the necessary equipment. If a worker is seen working in an unsafe manner, he will be given a stern warning the first time; the second time he will be sent home for one day without pay; the third time, no more chances or warnings: he is sent home permanently.

I have also made it mandatory to wear safety eyewear, for which my company has defrayed all costs of acquiring the eye protection equipment. Also, as part of our safety education program, once a month my office staff go through the process of photocopying, folding and inserting a

safety news bulletin in each pay envelope. I would also like to mention that 19 of my employees have just completed a cardiopulmonary resuscitation course. I believe we cannot legislate common sense among our workers. Employers are willing to take responsibility for ensuring safe work sites, but we want a partnership with our employees in order to do it.

I could go on talking about the measures we take to promote safety. I know of many employers who have implemented similar policies at their respective businesses. Having said all this, you can see that we have made a serious commitment to the safety of our workers.

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As chairman of the health and safety committee for both the Ottawa-Carleton Home Builders' Association and the Ontario Home Builders' Association, I would like to talk to you about the commitment these two associations have undertaken to promote health and safety in the housing industry.

First, I am proud to say that the OCHBA has had an active health and safety committee for the past 15 years which I have been chairing for the past five years. We hold regular meetings every second Tuesday of each month. As guests at our meetings, we have in attendance on a regular basis representatives from the Ministry of Labour, the Construction Safety Association of Ontario and the Workers' Compensation Board. The role of these representatives is to inform and educate our members on safety-related matters. We invite and encourage our workers to take part in these meetings. Everyone is welcome at these meetings, whether they are members of our association or not, because we feel strongly that if we can help them help themselves in implementing safety policies on their job sites, our whole industry will benefit.

Also, once a year, the Ottawa-Carleton Home Builders' Association holds a very special evening dedicated to safety awards. The purpose of such an evening is to recognize the individual and company efforts towards promoting health and safety on their sites. We encourage all our builder members and our trade contractor members to invite their employees to this special evening. We always have a guest speaker, such as, for example, Leonard Sylvester, general manager of the Construction Safety Association of Ontario who attended last year's awards night to speak on a safety-related subject. We see this type of event as another positive method of instilling safety in the minds of everyone.

Three years ago I was asked by the Ontario Home Builders' Association to take part on a special committee that had the mandate to draft a health and safety policy manual that would serve our 3,500 members. This special committee undertook this task with enthusiasm and spent numerous hours putting together a manual that addressed a very important need within our industry. In passing, I would like to mention that it is the same policy manual that I have implemented at my office. I am proud to have participated in this worthy project because it proved to be very successful and was well appreciated by our members since we are now in our third printing with approximately 10,000 copies in circulation. One of the objectives of the Ontario health and safety committee this year is to update our manual so as to address the workplace hazardous materials information system issue and the workplace smoking issue.

So, ladies and gentlemen, even though our industry is probably 80 per cent nonunionized, we do take the wellbeing of our workers quite seriously. We have risen to the challenge of improving our record. We have come a long way and we realize that we have yet a long way to go, but we are committed to forge ahead. We believe that our industry and our association can provide a mechanism for pooling together workers who have experience, knowledge and a sincere interest in promoting safer workplaces. Through the Ontario Home Builders' Association's 32 local associations, we are prepared to make a commitment to identifying the nonorganized sector of the labour force.

We see Bill 208 as a step in the wrong direction, leading to confrontation instead of good, sincere dialogue between management and labour. How can we possibly justify in this province, this land of opportunity, the creation of a superagency being represented by big business and big unions when we know full well that the largest employers and the largest creators of employment are small- and medium-sized businesses, and also when we know full well that 70 per cent of the workforce in Ontario is nonunionized?

Bill 208 also intends to give the power and the right to a certified safety representative to shut down a job site if he or she feels that there are unsafe working conditions. If you will permit me to be blunt, let's call a spade a spade. Construction has always been a higher-risk industry compared to other sectors of our economy and for us to think that we can legislate 100 per cent risk-free, safe construction sites, is like dreaming

in Technicolor. Instead of the unilateral power to shut down a work site, we recommend that certified workers have the right to an immediate conference with their immediate supervisor. Such an approach would encourage co-operation between worker and employer. Where the two parties cannot come to an agreement, a third party, a Ministry of Labour representative, should be called in to make a final decision. There should be an internal responsibility system in place to avoid potential conflict. Rather than focusing on certified workers, we believe the legislation must get back to underlying principles, namely to create a greater degree of awareness among all partners, not just an élite few certified workers. Training and education must be the overall message which the bill delivers.

As one of many responsible employers of this province, I take offence at the way Bill 208 tends to insinuate that all employers lack the commitment and the moral conscientiousness to provide their workers with the safest working conditions possible. I would not be honest with you today if I would say that all employers live up to that moral obligation of providing the safest working conditions humanly possible for their workers. I say to you that we should deal with these few exploiters in the harshest way possible, but please, do not let the good suffer for the bad.

By giving unions these new powers through certified safety representatives for them to use for better or for worse, whichever they see fit, would be a great tragedy for the free enterprise system in this province. I and many others would not be able to survive as entrepreneurs.

Before I take my leave, ladies and gentlemen, I would like to leave you some booklets that boast of Ontario as having the best construction safety record in Canada and in most of the industrialized world. This book was published and distributed by the Ministry of Labour, the same ministry that is proposing a major overhaul of the Occupational Health and Safety Act through Bill 208. So I ask myself and I ask you, ladies and gentlemen, based on the information contained in this book, proving that in the past few years we have seen a significant improvement in lost-time injuries and fatalities in construction, why do we need these drastic changes? Does the present government have a hidden agenda? Has it decided to sacrifice small- and medium-sized businesses for the sake of big business and big unions?

In closing, I beg of you not to allow Bill 208 to place our livelihoods as business people and that of our workers in jeopardy by its implementa-

tion. Will Bill 208 save any lives? Nobody knows the answer to that question, but what it will be is a step backwards in making the workplace a safer place. I thank you.

Mr Mackenzie: I was listening to your presentation, Mr Sanscartier, and I wondered if you are aware—it may be time that we repeat this—of the fact that we had 285 deaths in the workplace last year; that 434,997 workers were injured on the job; that 1,820 workers are injured every working day, 227 every working hour, and this does not include the toll taken by occupational diseases.

The average fine is \$2,346. Seventy-eight per cent of our workplaces are in violation of the act or the regulations; 30 to 40 per cent of our workplaces with designated substances had not carried out an assessment or implemented a control program to reduce toxic exposure required by law; seven per cent of workplaces with 24 or more employees had not established a joint committee; 34 per cent of smaller workplaces with designated substances had not established a joint committee; 35 per cent of joint committees had work members selected by management, 60 per cent of committees had a single chairperson—and in 73 per cent of those cases the chairperson was from management—and 10 per cent of committees did no inspections at all. It goes on and on. These are figures from the ministry.

1520

Mr Sanscartier: Relating to the construction industry?

Mr Mackenzie: No, relating to safety and health programs generally.

Mr Sanscartier: I cannot answer for other industries in this.

Mr Mackenzie: In the construction industry, the safety improvements that you talk about, in the last year there was a drop from 39 to 35 deaths, and there are still tens of thousands of injuries in that industry. I am wondering just how that ties in with the comments that you have made in your presentation.

Mr Sanscartier: I did not publish and circulate this book. This booklet comes from the Ministry of Labour. We did not see an improvement just in one year. These improvements have been statistized over a number of years.

I believe very sincerely that the construction industry is living up to its commitment to offer safer working conditions to our workers. The province is boasting of our record worldwide and across the country, as having the best safety record.

Mr Mackenzie: They do not refute the figures that I have just given you, Mr Sanscartier. You are in an unorganized business, and I recognize that, but certainly the building trades people who have been before this committee as well have had great difficulty with the argument of the safety. They have supported the bill just as strongly as you have opposed it. At least the organized sector in the building trades in this province of ours very strongly supported this particular piece of legislation and has also raised the question of what right really your associations or your organizations have to decide who the unorganized workers would be and, if you did make that choice, who those workers would be responsible to, if your associations were making the choice or were helping to decide unorganized worker representatives should be.

Mr Sanscartier: As I mentioned, we are willing to find a mechanism for identifying nonorganized workers who would be willing to sit on an agency so that we are represented also. How can we justify only unions having a monopoly on health and safety in the construction industry? Where will the representation be for the other side, the nonorganized?

Mr Mackenzie: By the same token, if we use your argument, how can we justify the Construction Safety Association of Ontario with a governing body of 100 members, of which only 13 are workers? The rest are management people. And this is the body you put most of your faith in, the Construction Safety Association.

Mr Sanscartier: I think they have done a good job in the past.

Mr Mackenzie: But they sure do not represent the ordinary workers.

Mr Wildman: Or the unorganized.

Mr Sanscartier: Or the unorganized.

Mr Wildman: There is only a total of 13 out of 100.

Mr Wiseman: Robert, I am really pleased to see you come forth and do what I have always believed in in this province, in this country, to create employment and to start from nothing, I imagine, much like myself. Many of us who are in here have young people coming to talk to us to see if there is still an avenue out there today that will allow the young people to do what you and I and others have been able to do in the past.

I am pleased that you came forward. I have made comments to some of the union representatives when they run down management, that all management is supposed to be bad guys. You have illustrated here today, in a good way, that

you are not, that you look after your employees. If they do not want to look after themselves, they get two chances and then they go home for good.

It is really healthy, I think, for us to hear from people like yourself, grass-roots people as I like to refer to them, who have the courage to come out and take the time away from their business to do that. Some of my colleagues may never agree that your construction industry has made great improvements, but I think if they are reasonable at all, they will realize that you have and that you continue to bring down the accidents in the workplace.

I think too that you called a spade a spade. We would love to see no accidents, period, but I think we are naïve if we believe that will ever happen, no matter what bill we have or how many restrictions we write in it. I would just like to congratulate you on that. What you said in the brief makes a lot of good common sense and I always believe that common sense is the best educator and the whole bit. Thank you for coming and for presenting it and showing some people that private enterprise is still alive and well and that private enterprise does care for its workers and their families and the whole bit.

Mr Sanscartier: I like to think that I am part of the majority. If I have the interests of my workers at heart, which I really do from the bottom of my heart, there are many others out there, entrepreneurs, who have their workers' health and safety at heart; also their financial success. You know, it is nice to see our workers succeed in their financial affairs; it is part of our obligation also to give them some type of job security, and we live up to that.

Mr Dietsch: I too would like to echo Doug's comments in appreciation for your coming before the committee, but recognizing in Mr Mackenzie's question that there is out there a great deal of difficulty with respect to workplaces unlike your own. Unfortunately, in this kind of process today we get some of the better employers who come before us, but we do not get the employers who are out there whom we are trying to attract, who are perhaps not as safety-conscious as yourself.

There have been some improvements in the construction industry, but there is still a great deal of deaths and injuries that occur. In the last five years, for example, there has been an increase in injuries from 12,200, I think, to over 17,000. That certainly does not mean to say that your particular place is a contributor, and I think it is important to outline that as well.

But, also recognizing that the legislation encompasses everyone—it does not just encompass the construction industry; it encompasses the whole of the workplace in Ontario, moving towards providing occupational health and safety for everyone—the question I have for you is in relation to some of the concerns that you express with regard to individuals who are unionized or nonunionized. I presume an individual such as yourself has worked probably in a host of sites, or have you just worked in nonunionized sites?

Mr Sanscartier: Mostly nonunionized, because I am not allowed to work in a—

Mr Dietsch: No, no. Before you became a business person, I am asking.

Mr Sanscartier: Before I was working for a union, for a syndicate.

Mr Dietsch: The question I have is in relationship as to whether you feel that unionized people look at safety and health any differently than nonunionized people.

Mr Sanscartier: No, they have the concerns of their members or their workers, the same as I do. The danger I see in giving the unions the monopoly on health and safety is it might be seen as indirectly an infiltration. If I had decided, as a lot of other entrepreneurs decided, to be non-unionized, it is also our employees' choice, not only ours. But eventually, by giving them these new powers, is it another way for them to infiltrate our ranks? My concern is: Eventually will we become like the province of Quebec where a worker before getting a job has to belong to either la Confédération des syndicats nationaux or la Fédération des travailleurs du Québec? Will Ontario become the same?

1530

Mr Dietsch: Your concern lies not so much in how they view health and safety as in how they view other labour issues.

Mr Sanscartier: They might use their new-found powers, as I mentioned in my brief, for good or for bad and as a means of forcing us to abide by other laws or rules that they have that do not even touch on health and safety.

Mr Dietsch: Is it just an underlying concern of yours, or do you have anything to substantiate that this in actual fact would happen?

Mr Sanscartier: It is very hard for—

Mr Dietsch: Let me just back up a little bit. With the individual right to refuse that was used during the current act and is enhanced in the current act, employers thought that workers were going to shut down workplaces frivolously. In

many of the instances, that has not happened. Rather than, I guess, fighting what could be a ghost, I am trying to understand where you are coming from in terms of feeling if there is something substantial that you can offer that would say that unions would do this. There are so many other ways to organize today, I am not sure that they are interested in the health and safety aspect to organize as they are in just coming to your workplace.

Mr Sanscartier: They can use that as a tool to organize. For example, at my place of employment I know the unions have been trying to get us certified. I am not the one to say that I refuse because it is not my choice. It is the workers who refuse. They work in a nonunion environment. They are happy to. They are the ones who say no to unions. If they feel that I am not an employer with a moral conscience, they will probably agree to sign for syndication. But will the new-found powers give them another tool to try to infiltrate my organization? That is what I am worried about.

The Chair: Mr Sanscartier, thank you for your presentation to the committee this afternoon.

Mr Callahan: Just very quickly, I appreciate your coming forward too, and I am sure that you are speaking straight from the heart, but I think the answer to this legislation is in your final question. You say, "Will Bill 208 save any lives?" Nobody knows the answer to that question. You cannot leave things hanging like that. That may be all well and good for people coming before this committee to say that, but a government is charged with the responsibility of not leaving that question hanging. That is the reason something has to be done.

Mr Sanscartier: Well, as I mentioned earlier, I can only talk for my industry because it is the only industry I know.

Mr Callahan: Mr Mackenzie indicated that there were four less deaths, I think he said, last year than there were before. Four less deaths or four more deaths, that is an awful lot. One more death is too much. You cannot just have that, allow an industry to continue on that way without having some rules and regulations to protect the workers who have to work in those industries, particularly construction because construction is a particularly significant area where people receive injuries, such as back injuries, which will be with them for the rest of their lives. I just do not understand your question, "Will Bill 208 save any lives?" "Nobody knows the answer to

that question, so do not do anything." That is what I get the feeling you are saying.

Mr Sanscartier: No, no. If you think that, you are only reading the last paragraph. We are willing to work with Bill 208, but in the construction industry—have you every worked in the construction business?

Mr Callahan: Yes, I have. I broke my leg there.

Mr Sanscartier: Okay, you know what I am talking about. If we can sit here and say we can legislate 100 per cent risk-free construction sites, I will be with you all the way. But we cannot legislate common sense, we cannot legislate 100 per cent safe construction sites. I cannot talk about the manufacturing sector or other sectors of our economy because I do not know them, but I know in the construction industry we will never, never be able to legislate fully safe, accident-free sites. Impossible.

The Chair: On that note, we really must end, Mr Sanscartier. Thank you for coming before the committee.

Mr Sanscartier: I would like to thank you very much for hearing me and I wish you luck. I will leave these booklets with you. I only have two copies—safety policy reference manuals.

The Chair: Thank you.

The next presentation is from the International Association of Machinists and Aerospace Workers. Gentlemen, we welcome you to the committee and we look forward to your presentation.

Mr Goodison: Good morning.

Mr Dietsch: God, I hope not. I hope it is not morning.

The Chair: I think you know the rules, that for 30 minutes we are in your hands. Introduce yourselves and we can proceed.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

Mr Goodison: I said "Good morning" because I was here this morning and I did not hear anything different this afternoon from this morning so I thought it was just a continuation on.

The Chair: Introduce yourself.

Mr Goodison: My name is Jim Goodison and I am grand lodge representative with the machinists union. My co-worker is Lou Erlichman. He is the research director for Canada for our organization.

I will run through the brief that we have, and if there are any questions, we can go from there. I would like to make a few additional comments as well.

The machinists union represents 21,000 workers in a variety of manufacturing and service industries in Ontario. We are pleased to have the opportunity to appear before this committee to offer our views on Bill 208, legislation which will have a major impact on our members and other working people throughout the province.

Ontario's workplaces are far more dangerous than they ought to be. Fatalities occur at the rate of almost one per working day and there are over 200,000 reported compensable injuries and illnesses per year in this province. This is an unacceptable record. We all share part of the burden of workplace injuries and illnesses, but it is the injured workers and their families who pay the most, both financially and emotionally.

It is an unfortunate fact of life and death that companies seeking to maximize their profits and cut costs find the protection of workers' health and safety one of the easiest areas to make short-run savings. When the pressure is on to keep production moving, it is easy to overlook a somewhat higher risk of injury or illness, and that is becoming more and more obvious since the introduction of free trade and the competition from south of the border. We are finding that employers are coming to us and saying: "We can't afford to enforce these laws. Our competition from Alabama, Texas and South Carolina don't have these laws." Well, gentlemen, we have it, and it is just too big a price for us to pay.

The polling we have undertaken, along with other groups, indicates that employer pressure causes significant underreporting of workplace accidents so the record is even worse than it seems. We cannot rely on employers' good intentions and sense of responsibility to guarantee the safety of their employees at the workplace. The existence of an Occupational Health and Safety Act is a recognition of that fact, but our deplorable record on workplace safety means that much more has to be done.

1540

Our polling indicates that four out of five Ontarians believe that workers need more information about workplace hazards and safety. Employers have shown themselves unwilling to meet this challenge. In the past, information programs produced by employer-controlled industry safety associations have blamed the victim for being the author of his own misfortune. Such programs are no substitute for real information,

and Bill 208 is a small step towards reducing employer domination of the industry safety associations and education programs.

Management attitudes in some instances are so bad that some of our Ontario locals have withdrawn from participation in joint health and safety committees. It is essential, therefore, that workers be given the power to protect themselves in the workplace. While Bill 208 provides some improvement to the current act, it falls far short of providing the legal framework which would allow workers in this province to ensure that their places of work are as safe as possible.

The management-run industry safety associations have not done the job of protecting Ontario workers. In fact, they seem to have been more concerned with protecting the interests and profits of management. We are therefore happy that these safety associations will pass to bipartite control under the new bill. We are, however, concerned, particularly following the minister's proposed amendments, that true joint control will be undermined by the naming of worker representatives who are not nominated by the trade union movement and do not in fact represent workers' interests.

We also believe that it is important to maintain the strong and effective Workers' Health and Safety Centre and clinics, with a mirror management centre to be set up if required, aimed at dealing with workplace health issues from a worker's perspective, which is not identical to a management perspective. The bipartite Workplace Health and Safety Agency can oversee these worker and management institutions without saddling them with bipartite boards of directors, which would undermine their basic character.

We agree, however, that the sectoral associations should be run by bipartite boards. The minister's proposal to impose a neutral chairperson on the Workplace Health and Safety Agency undermines the bipartite basis of the proposed system, adding unnecessary complexity to the arrangement. Management and labour should be allowed to run the agency. I agree with Mr Wildman's comment about neutral chairmen; there is no such thing as a neutral chairman. I would defy anyone in here to suggest that they could find somebody who was neutral.

Mr Dietsch: Floyd Laughren.

Mr Goodison: Floyd is not neutral any more than I am, and I would not be neutral, nor would you or anyone else.

The Chair: Thank you very much.

Mr Goodison: The fact is, though, that if you have bipartism and you want bipartism to work, then you must have co-chairmen, and they must work it out from there. If he was neutral, he would not be elected the next time; you know that.

We also do not understand why the minister is proposing a small business advisory council without offering workers in small businesses the same opportunity to make their views heard.

Mr Callahan: Is he suggesting we are political?

Mr Goodison: Christ, I hope so.

Worker health and safety is a problem in workplaces across Ontario, yet there are major gaps in the protection afforded by the proposed workplace health and safety legislation. Farm workers, a group with higher than average rates of workers' compensation claims, are excluded from coverage under the act. There is no justification for such an exclusion.

While the requirement for joint health and safety committees would be extended by Bill 208, many small workplaces remain uncovered, and construction projects of short duration and with less than 50 employees will lack some basic protective elements: certified safety representatives and the accompanying right to stop unsafe work. This special treatment is particularly unwarranted in light of the construction industry's record. Over the last decade, compensable injury rates in construction have consistently been more than twice those of the Ontario industry overall. I hope the previous speaker is still in the room to listen to that.

The right to refuse to work in unsafe conditions without facing reprisals is an essential part of effective workplace safety. While Bill 208 would initially have expanded the right to refuse to include unsafe activities which do not present an imminent danger, the minister's proposed amendments back down on this important issue. It is essential that workers have the legal right to be protected from being required to work in conditions that will cause them disability or death. We believe that the authority of a certified member to stop work should be extended to any work for which there are reasonable grounds to believe that danger exists.

The legislation as written only provides the right to stop work where there is immediate danger as a result of a contravention of the act or regulations. This is in fact a step backwards from the current situation, since an illegal act is not now required. Ironically, the stronger the right to stop unsafe work, the less likely it will be used in

the long run, as employers learn that they must make the workplace safe or pay the price. It is also unacceptable that public sector workers have severely limited rights to refuse to do unsafe work. No worker, in public or private sectors, should be made to work in unsafe conditions.

A further limit on the value of the right to refuse is the provision that workers affected by a refusal or a stop-work order do not have to be paid, though the worker who refuses does. This can lead to strong pressure on the worker refusing unsafe work to back off so that co-workers do not lose pay. This can cause unsafe work to continue, surely not the intent of the legislation. All workers affected by a stoppage due to unsafe conditions should be protected from wage loss. It is an employer's responsibility to provide a safe workplace. If he does not, he must be made to pay the price for his refusal.

Closely related to the right to refuse is the right to stop unsafe work. Bill 208 provides for a certified worker member of each health and safety committee to have the right to shut down unsafe work. Unfortunately, other parts of the legislation and the minister's proposed amendments seemed aimed at chipping away at this fundamental right.

First, it appears that work shut down by a certified worker member can be immediately started again by a certified management member. This makes the right to stop work meaningless. Only a ministry inspector should have the power to restart stopped work. To make things worse, the minister now proposes to take away the stop-work authority in all workplaces but those with unacceptable health and safety standards.

In the light of the clear evidence of employer suppression of accident reporting and the difficulty in separating the bad from the good employer, surely not a judgement that can be made prospectively, this limitation is itself an unacceptable standard.

Even where dangerous work is legitimately refused by one worker, an employer can assign another worker to do the job. The second worker, particularly a new or probationary employee, could be, and many times is, intimidated into performing dangerous work. It is therefore essential that the legislation require that no one be assigned to dangerous work until the safety problem has been resolved.

When an employee refuses unsafe work, the law protects him or her from reprisals. An employer who fails to pay the worker who legitimately has refused work can, however, postpone payment for months—effectively a

reprisal—without any negative consequences. We believe that the legislation should provide that employers be prosecuted and penalized for failing to treat fairly those workers who are simply exercising their right under the law.

Bill 208 provides an expanded role for joint workplace health and safety committees, providing for labour and management joint chairmanship, certified members with special training and requirements for employers to pay some of the costs of preparation.

Unfortunately, the expanded role seems to be more rhetorical than real when we look in detail at what the bill says. Full workplace inspections, a central part of any preventive health and safety program, have only to be done once a year and can be done on a piecemeal monthly basis. We believe it is essential that the legislation require that the entire workplace be inspected at least monthly.

While the bill requires that worker members of joint health and safety committees must work in the workplace, apparently so that they will be familiar with the particular problems of that workplace, it seems strange that the same requirement is not also extended to management so that their representatives share a knowledge of the workplace.

1550

We believe it is essential, given the crucial role of the certified committee member, that the workers, or the union where there is one, should name the certified worker representative. It is the union's responsibility, not management's, to decide who can most effectively fulfil this role, and many unions invest considerable resources in providing health and safety training to particular individuals.

Committee members must be assured the right in the legislation to bring technical advisers into the workplace. It is only with guaranteed access to professional assistance that worker members can effectively do their job on an equal footing with management representatives.

Bill 208 gives employers 30 days to respond to joint committee recommendations. Remembering that employers are represented on joint committees, so that recommendation should be no surprise, we feel that a seven-day deadline would be more than sufficient.

We believe that certified members must be required to investigate all complaints, even where there is no stop-work situation. The lack of such a requirement in the law will subject many certified members to pressures to not investigate important complaints.

Several administrative changes would also aid in making the legislation more effective.

There should be a process for appealing Ministry of Labour decisions independent of the ministry. A board and an approved group of independent arbitrators should provide a fairer appeal process than the current situation, where the appeal is to a ministry employee.

Certified committee members should have the right to issue orders for hazards to the corrected, even when these hazards do not require an immediate work stoppage. Such a process would require an employer to either correct the work or bring in a ministry inspector. Without the authority to bring in an inspector, there is little within the law to force an employer to comply immediately. Expanded authority of this kind would help prevent problems from escalating to the point where a work stoppage occurs.

We also believe that the practice of on-the-spot citations now followed by construction safety branch inspectors should be extended to inspectors in other industries. Immediate citations and fines, subject to appeal, make sense for many minor violations that the inspectors are unlikely to bring to prosecution otherwise.

We believe that the agency should not have the responsibility of disciplining certified members. The Ontario Labour Relations Board is capable of dealing with cases of certified members who act improperly, and the employer has recourse to discipline using that avenue. Giving the health and safety board the power to impose extra penalties is unnecessary and counterproductive.

A final point relates to new chemicals or other materials in the workplace. Bill 208 defines substances as new if they have never been used anywhere in the world. Thus, substances used in a country where there is no serious testing requirement would not be considered new and could be introduced into Ontario workplaces without even notification to the ministry. The law should require that no substance should enter an Ontario workplace without proper testing and a requirement that full information be provided to the workers.

We are angry that the government is backing down in the face of employer pressure from the heart of this vital legislation. The vaunted internal responsibility system has not been effective, as our safety record shows. Even the requirements of the current law are not being met. Inadequate resources have meant there are too few inspectors for adequate enforcement. Penalties for noncomplying employers are too

small to have a real deterrent effect. Training throughout the system is inadequate.

In spite of the crying need for reform, the government seems more concerned with placating business interests than with protecting workers. If this government is serious about making the lives of Ontario workers safer, it will strengthen this legislation, not weaken it.

We ask the members of this committee to propose to the government the changes that we have proposed in this bill.

If I might switch hats for a moment, I also happen to sit as one of the directors on the Workers' Compensation Board in this province. If things are going so safely around here, I am wondering why we are pushing \$3 billion for a budget in workers' compensation. It just seems astronomical that in this day and age the Workers' Compensation Board should spend more money than any other department in this government.

We are not moving towards a safer workplace, in spite of what some of the previous speakers have said. Thirty-five deaths in the construction industry where they have double standards is not acceptable; 285 deaths in a year is not acceptable. I hope that the previous speaker is wrong, that we can legislate a totally safe workplace, one where people are not being killed.

You know, it is strange. The 285 people that were killed were workers; they were not management, they were not employers, and with all due respect, they were not politicians. They were workers and they were people who were raising families and raising children and doing their best to survive in this world. It is up to you, as the legislators, to ensure that they are going to survive.

With all due respect, not all of your families, not all of your children or your children's children are going to be able to enter into the political field where it is nice and safe, or someplace else where it is nice and safe, management. They are going to have to go to work and they are going to have to be exposed to some of these hazards. I think if some of them had to work under some of the conditions that I have watched people work under, you would be appalled and you would want the legislation there.

You know, there was this big shemuzzle back in the 1970s, when the right to refuse was brought in, how it was going to kill business, it was going to just put us out of the world, that was it, that was the end of it. Everybody was going to have to close the doors, pull the blinds down and

go home. It did not happen, and it is not going to happen with the worker representative having the right to shut a job down either. There may well be more shutdowns, but they will be responsible shutdowns and ones that are needed.

Mr Mackenzie: Mr Goodison, one of the terms used during the debates in 1978-79 was "chaos in the workplace," as well as all of the threats if we brought in the right to refuse. Do you think it is actually possible that the business community had less influence on Bill Davis than it has on David Peterson?

Mr Goodison: Let me just say this: It is strange. Here we are with a government bill, and we are trying to get the government to bring in its own bill. All these hearings are going on because the government wants to amend its own bill, and it just seems fascinating. Now we all know—I mean it is no secret why Sorbara got moved and it is no secret why you have a new minister in there now. Are we going through a charade here? I guess, fortunately, I had a bit of a time when I worked for a government in another province as a deputy. When we brought a bill in, it was a government bill and we fought for that bill. I have never seen anything like this. Maybe it belongs in Ringling, I do not know. I have never seen anything like it.

Mr Mackenzie: The pressure is obvious. The pressure was on the previous government, of course, and at least it did not back off the right to refuse in Bill 70. It is obvious that the government has responded to—the Premier has himself—to the letter from Mr Thibault and has passed it on to the Minister of Labour (Mr Phillips).

The other thing you made reference to—and I am not sure whether we are in a total charade or not because I have not yet heard either an apology from the minister or a clear explanation of the interview he gave the day before our hearings in the city of Kitchener. The operative two paragraphs, the quote attributed by Ron DeRuyter of the Kitchener-Waterloo Record staff who tells me he has it right—I would like to hear a defence of this quote—is:

"Giving individual workers the right to shut down unsafe workplaces would undermine the partnership between management and labour, says Ontario Labour Minister Gerry Phillips.

"The Liberal government backed off from the most controversial sections of its proposed health and safety legislation because of the damage it could do to labour relations in the province, Phillips said in an interview.

“My biggest concern is that rather than enhancing the partnership, I am afraid we would undermine the partnership,” he said.”

That is not what we are debating here today, which is what made me so angry in this statement. That is the bill as they intend or have indicated they want to amend it. What is before the people who are making presentations here today is not what the minister himself is saying he has already decided to do. I think that is basically dishonest, and it does raise the question of whether we are involved in a charade here or not.

Mr Fleet: On a point of order, Mr Chairman.

Mr Mackenzie: Would you tell me what the point of order is?

Mr Fleet: Yes. He is suggesting that the minister has not presented the materials to the committee, that the minister is being dishonest. I do not think that that is parliamentary language.

Mr Wildman: On the point of order—

The Chair: Wait a minute now.

Mr Fleet: There is material that has been brought forward as to the comments in the House that all members have had about what he proposed. You do not have to like it or agree with it, that is fine, but that is certainly a matter of record in the Legislature as well as with the committee. To suggest to the witness or anybody else that that it is not the case is inaccurate.

The Chair: Order, please. On your point of order, I will not intervene in the question of whether he did or did not present material, but only on the question of the term “dishonest,” which really is inappropriate in a parliamentary committee, Mr Mackenzie.

1600

Mr Mackenzie: The best I would say is that it certainly raises serious questions, because we are debating a bill that does give you the right at the moment, although the suggestion has been made that we will not have it. Yet he is saying to the reporter, the day before our hearings in Kitchener, that that is the route he has already gone.

Mr Dietsch: Is he going to withdraw the comment?

Mr Fleet: Is he going to withdraw it?

The Chair: I did not hear whether or not he was intending to withdraw the “dishonest.”

Mr Mackenzie: I withdraw the “dishonest”—very misleading.

The Chair: No, no, no. That is just as bad, Mr Mackenzie.

Mr Mackenzie: I will withdraw the comment.

The Chair: Thank you, Mr Mackenzie.

Mr Mackenzie: It seems to hurt the Liberals, because they know we are on very dangerous ground here.

Mr Goodison: Mr Mackenzie asked a question about the panic about the shop work and so forth. I have a copy of a letter that was sent to the Premier on 2 March 1989, which was shortly after the original legislation was tabled.

The last paragraph says: “I will be calling early next week to arrange a meeting. I hope the changes to Bill 208 can be made before the ground swell of opposition by our members and others in the business community grows out of control.” It seems strange—this is from the Canadian Manufacturers Association—that every proposed change that was in that letter is in the proposed changes to this bill. These changes are going to make it totally unacceptable to labour. It becomes a question of what you are going to do. I guess the inference is that the government introduced legislation and then, because the business community has risen up and slapped it on the wrist, it is going to say, “Well, how would you like the changes?”

The Chair: Thank you. We had better move on, because we are almost out of time. Mr Callahan and Mrs Marland, it would be nice to hear from them both.

Mr Callahan: I guess the first question I would have to ask you is, what do you like about the bill? You do not have to answer that. It is kind of like the question that was asked of Mrs Lincoln: “What else didn’t you like about the show?” But I would like to go to a couple of items that are in your brief.

On page 4, the first full paragraph, you say, “The legislation as written only provides the right to stop work where there is immediate danger as a result of a contravention of the act or regulations.” That struck me as not being what I recalled reading in clauses 23a(1)(a), (b) and (c). I think you should reword that because I do not think that is really accurate. It gives three scenarios: “(a) a provision of this act or the regulations is being contravened;”—that certainly does not require an immediate danger; “(b) the contravention poses a danger or a hazard to a worker;”—that can be a judgement that is made. Somebody does not have to have his hair caught in the machine to stop work. So I think it is very important that you understand that, and if you do not understand that, as your brief would appear to

indicate, then I would like to draw that to your attention.

Mr Goodison: What about sanction?

Mr Callahan: Well, yes, but you have got an option; all three of them.

Mr Goodison: I see.

Mr Callahan: So you have exactly the same situation as you have under the present legislation. All I am suggesting is that that paragraph is erroneous and it should be made clear. I would also like to draw your attention to the—

Mr Mackenzie: That is your interpretation.

Mr Goodison: I do not think it is erroneous.

Mr Callahan: No, it is not my interpretation at all, Mr Mackenzie. It is clearly in the wording of the legislation. Read it.

I would like to ask you the question I asked the other groups. If you do not have a neutral chair and you just have two people making a decision and they cannot arrive at a decision, what is your suggestion as to how you deal with that? How do you solve that problem?

Mr Goodison: Well, generally when you run into that kind of situation, you do wind up in resolving it, the same as we do in the collective bargaining process, where you run into that kind of a situation. When parties get there they disagree. Eventually they do resolve the—

Mr Callahan: Okay, but—

Mr Goodison: Excuse me; can I just move back?

Mr Callahan: Sure, go right ahead.

Mr Goodison: Because I would like to have this issue corrected on section 23a. Subsection 23a(1) says—let me start at the beginning:

“A certified member who finds that,

“(a) a provision of this act or the regulations is being contravened;

“(b) the contravention poses a danger or a hazard to a worker; and

“(c) the danger or hazard is such that any delay in controlling it will cause serious risk to a worker.”

It does not say “or;” it says “and.” That means they both go hand in hand.

Mr Callahan: How do you conclude that it requires an immediate danger?

Mr Goodison: It says, “(b) the contravention poses a danger or a hazard to a worker; and

“(c) the danger or hazard is such that any delay in controlling it will cause serious risk to a worker....” They are not separate. It says “and.”

Mr Callahan: Okay. Well, that can be a judgemental decision. A machine that has no

guard on it obviously fits all of those contentions, but you do not have somebody in immediate danger.

Mr Wildman: What about an ergonomic problem?

Mr Goodison: That is not so. Let me say this: When you have a machine, it is not an instant hazard until somebody goes to operate that machine.

Mr Callahan: I agree.

Mr Goodison: I have been in this business a long time and I had a local in New Hamburg that used to be able to tell the seniority of the people by the number of fingers that were missing.

Mr Callahan: Look, I am not disagreeing with that. What I am saying is, that could be a judgement that could be made about something that could constitute a hazard. Therefore, they could shut the work down because of that until there was a guard put on that machine. Maybe it is semantics. Maybe you are using the word “immediate,” which does not reflect to me the same thing as I read the section.

But going back to the neutral chairperson, you say that this could be worked out by the two of them collectively bargaining, as it were.

Mr Goodison: That is what I want.

Mr Callahan: I think you will agree it could take a considerable period of time.

Mr Goodison: I do not believe so. The people who are involved directly in these things are well aware of the contingencies and the problems.

Neither one of those chairpersons is going to want to shaft his own credibility by delaying things to the point where something does happen. They are going to want to get it resolved.

The Chair: I am sorry; we are running out of time. Let Mrs Marland finish off the questioning.

Mrs Marland: You made a very interesting comment that I would like to ask you questions on. Towards the end, when you changed your hat, you said you had a hat as a director of the Workers' Compensation Board. I am wondering two things: One, is it the board of WCB that has approved the multimillion-dollar expenditure that is going on right now to promote the good works of WCB and how it looks after its injured workers? Every time I turn on the television I see this ad and it makes me furious because I do not happen to think the WCB—

Mr Fleet: On a point of order—

Mrs Marland: Excuse me, I am leading to the point. I know you are going to say this is not on Bill 208, Mr Fleet, but if you do not mind, I

would like an opportunity to speak for a moment.

The Chair: We are also out of time basically, so if you would get to it.

Mrs Marland: We all know that the WCB is not doing the job that it should be doing for injured workers in this province. I am wondering, first of all, whether the board approved that expenditure and, second, if not, did the ministry—

Mr Fleet: On a point of order, Mr Chairman: This is not on Bill 208.

The Chair: Let Mrs Marland finish.

Mr Fleet: No, I am raising a point of order. This time I am addressing the Chair as I would expect Mrs Marland will reply through the Chair. I do not think the question relates to Bill 208.

The Chair: In all fairness, I really think we should hear Mrs Marland out. I think she is getting to the point.

Mrs Marland: Is it your feeling, in your position with your union, that the promotion of the WCB and the good work that it does in looking after injured workers is going hand in hand with a direction from this Liberal government to say what a good job and how workers are being protected in the province and why Bill 208 is all right as it is?

Mr Goodison: The ads that you are looking at are ads that were hidden under the guise of a budget to inform people about the need for changes as a result of Bill 162, not Bill 208. So that is how that money got there.

As for the WCB and what it is doing and how it is achieving it, I would suggest that it would be much more effective if it were a bipartite board as opposed to the present system. Right now, there are only three labour representatives on there and we have trouble winning votes.

The Chair: We thank you for coming before the committee and providing us with an interesting exchange.

Mr Wildman: Mr Chairman, I do not—

The Chair: Let's let these gentlemen go and then I will call the next group up and you can raise your point.

The next presentation is from the Ottawa Construction Association.

Mr Wildman: I do not want to delay things any, but I just would like to ask you, in the light of Mr Fleet's first point of order that he raised, if it would now be in order for me to move that the parliamentary assistant table the amendments that the government intends to make to this legislation so that from now on the hearing can be

dealing with the amended bill that the government intends to introduce rather than going through the charade of dealing with a bill that is going to be changed by the government.

The Chair: You could try. I would hope you would not do it at a time when there is a presentation before the committee, which would cut into the presentation time.

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Mr Wildman: All right; in that case, I will wait until after or, better still, I expect the parliamentary assistant will do it voluntarily.

The Chair: Can we have the Ottawa Construction Association come to the table, please?

Mr Zeidler: We have five in our party.

The Chair: If we can find a couple of extra chairs for you, we will squeeze you in. As long as whoever is speaking speaks into a microphone we will be all right.

We do welcome you to the committee. I think if you have been in the audience you know we are a free-wheeling group but we do have some rules. One of them is that you have 30 minutes. You can take up all of it with your presentation or you can save some of that 30 minutes for an exchange with members of the committee. We welcome you to the committee and if you will introduce yourselves to us, you can proceed.

OTTAWA CONSTRUCTION ASSOCIATION

Mr Zeidler: My name is Dick Zeidler. I will be the leading-off speaker here. I am a past chairman of the Ottawa Construction Association, have been a director of the OCA for 10 years and I am also the executive director of the Construction Safety Association of Ontario.

Mr Donovan: My name is Jack Donovan. I am the immediate past chairman of the OCA and have been a member of that board for six years.

Mr Holmes: My name is Derek Holmes. I am the manager of labour relations for the OCA.

Mr Zeidler: I believe you have a prepared document from us; if I may, I want to give one ad lib before I start reading it. Having listened to a portion at least of the preceding presentation to you, I think it is important to stress that we are all here for the same reason, and that is to reduce accidents. I think it is only in the manner in which this achieved that the differences occur.

We would like to thank the committee for the opportunity to address you and present our views on the proposed Bill 208 amendments to the Occupational Health and Safety Act.

This brief is submitted by the Ottawa Construction Association. We are a local mixed

association representing 1,012 construction industry employers comprised of general contractors, trade contractors, mechanical-electrical contractors, manufacturers, suppliers, and service and professional companies in the national capital region.

Our association is a member of the Council of Ontario Construction Associations, and our members actively support and participate in the Construction Safety Association of Ontario and the provincial labour-management health and safety committee as members of these groups or as directors of their boards.

We support the intent of the Minister of Labour through Bill 208 to improve the health and safety of all workers in the workplace. No other industry in Ontario has demonstrated the commitment to health and safety that the construction industry has over the past years and no other industry has achieved a record equal to the construction industry's in Ontario for consistent improvement of health and safety in the workplace, a fact the Ontario Ministry of Labour itself has recognized through its publications.

While we have stated our support for the minister's intent with Bill 208, it is respectfully submitted that a number of proposed amendments are inherently flawed and may prove extremely detrimental to the continued improvement of our safety record and the co-operative approach between labour and management that the construction industry has developed over the past 20 years.

The industry's past record: In 1930, five construction employers saw the need for improved safety on their construction sites and decided to form an association of employers whose mandate it was to provide information and develop methods to achieve a safer workplace. That organization remains in place today and is known as the Construction Safety Association of Ontario. This group was established without the assistance of either government or labour. There was no pending legislation requiring employers to take this action. It was done out of the concern of employers to provide safer working conditions and improved quality of life for their employees.

Today, CSAO is recognized as the world leader in health and safety programming. Through the efforts of CSAO and the individual contractors, the construction industry's record had steadily improved over the years. In the 20 years between 1965 and 1985 the industry achieved a 44 per cent reduction in accident frequency and reduced by 5.2 per cent the

frequency of medical aid. Total fatalities were down by 64.5 per cent in the same time period.

The most recent statistical information for the construction industry lost-time injuries and fatalities indicate that our record continues to improve. In 1989, construction fatalities and lost-time injuries were down 10 per cent from 1988. Fatalities in 1988 were 39; in 1989, 35, down 10 per cent. Incidentally, as was previously noted, 35 is obviously still an unacceptable number but it is the improvement that we are stressing here. Lost-time injuries in 1988 were 17,661 and in 1989, 16,019; again down 10 per cent.

These impressive statistics have been accumulated through the construction industry's structure of joint labour, government and management co-operation in identifying areas for improvement and putting together adequate methods for accomplishing our common goals.

While the intent of Bill 208 is to accomplish this very model, its approach can only lead to an adversarial partnership that is forced on to the parties and renders only one side of the partnership accountable. Other industries and countries look at the Ontario construction industry's health and safety structure as a model to base themselves upon. We fear that the superagency, certified workers and the diffusion of stop-work power to nonaccountable parties undermine the idea of achieving the fullest possible safety structure.

A recently hired staff member who worked previously in a different sector of the economy attended a recent regional labour-management safety committee meeting. His impression of and comment on the industry's approach to health and safety was that to have labour, government and management all sitting at the same table seeking common methods of improving safety was something he had never seen before and is unheard of in other industries.

We wish to continue this positive relationship. We realize that all of the above successes do not mean that we have accomplished full safety in the workplace, and we are committed to continuing to improve our record through the proven means we have developed and with the assistance of positive legislation.

Following is an example of some of the concern our group has with the proposed bill:

The health and safety agency: This agency is proposed in an effort to provide a joint approach to health and safety. The problems we feel the agency will create are that it: duplicates some of the work of the CSAO; may be directed by

persons unfamiliar with the complex nature of a construction site, thereby providing uninformed direction; does not provide representation for the unorganized workforce; may dilute CSAO's effectiveness; and creates another layer of bureaucracy that is unaccountable to the construction industry.

The construction industry already has a voluntary joint labour-management structure in place through its joint labour-management safety committee, and these groups have nonunion representation in place. A forced relationship between the parties could initiate a confrontation where one party vies for power over the other and uses the threat of deadlock as a tool for achieving its objectives.

The certified worker: The provisions of the bill suggest that a select number of workers should be trained to identify unsafe working conditions and, if no action to rectify these conditions is taken, the certified worker will have the power to stop work. This approach focuses the safety issue on a few employees and creates the impression in others that they need not be safety-conscious because the certified worker will handle safety matters.

It takes the responsibility of policing the work away from the ministry inspectors and places it in the hands of inadequately qualified individuals who may over- or underreact to a safety issue. It may also place undue pressure on certified workers to relate safety issues to any unrelated agenda of their particular union.

The construction industry works on the premise that both employers and employees are responsible for ensuring a safe workplace. As a result, we feel that the onus should rest with the local committees and their management and union representatives to solve any issues that arise at the job site. In the event of an impasse, the Ministry of Labour must be relied upon to provide a rational and neutral judgement. Under no circumstances do we feel the process could be improved by granting an individual worker the unilateral right to stop work, especially as the individual worker would be unaccountable to anyone for his or her decision.

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This process would remove any incentive for the parties to work out their own problems and would, in our opinion, actually undermine the effectiveness of the local health and safety committees.

Our recommendations: While we understand and support the minister's objective of a safer workplace, we cannot understand why the bill is

suggesting such drastic amendments to a system that has a proven track record of improving safety.

We ask the minister and the committee, what if these amendments do not improve safety in the construction industry? It is quite possible, in our view, that what we may well accomplish is the destruction of the world's best construction safety program.

We recommend that the construction safety association be permitted to continue to operate at its current level of excellence as a completely independent agency.

We believe that no individual should have the unilateral right to stop work. The focus of the committee should be one of problem-solving and compromise, not confrontation. If at any time the consultative process fails, then only the Ministry of Labour inspector should have the right to issue a stop-work order.

We recommend that the construction industry be exempted from the amendments proposed in Bill 208. At the very least, certified members of the health and safety committees must be made accountable.

The construction industry is inherently different and more complex than other industries. If the government was to legislate a code of ethics for professionals, we do not believe it would apply the same code to doctors and lawyers equally. They are different professions, just as the construction industry is different from others. We therefore suggest that Bill 208 cannot be applied across all industries. Certain exemptions should apply.

It is not unusual for the ministry to exempt or apply different regulations to the construction industry. The Ontario Labour Relations Act and Employment Standards Act are just two examples of how the construction industry is recognized as different from other industries and special regulations are applied.

If the minister is unable to remedy our concerns, it is suggested that he approach the proposal within the bill using the construction industry structure as a model to be applied to other industries. Such an approach should be conducted with the assistance of representatives of the construction industry. We have a record of proven success and we are sure that we can build on past successes to improve safety. That is the minister's goal and it is our industry's goal as well. Together, we are sure we could achieve a workable solution.

Thank you for the opportunity to present our views. I hope we can have time to answer some of your questions.

The Chair: Thank you. We certainly do have time, and Mr Wiseman has a question.

Mr Wiseman: Thank you for your brief. I wonder if we could go back to page 2. Would your record of safety not be better if we knew that the number of construction jobs, I would think, has greatly increased from 1965 to 1985, so that the 44 per cent reduction—if we had known how many more people you had on construction sites in 1985 than you had in 1965, it would show an even greater improvement, would it not, than you are showing there in the reduction of workplace accidents? Then the same would hold true, would it not—even though we all think and talk of percentages, and you have here—of a 10 per cent reduction in the number of deaths? You said that was still far too high, but again, would it not be true that you have far more on construction maybe in 1989 than you had in 1988? So you have reduced the number of fatalities at the same time you have upped your employment, if what I know about the construction industry seems to be true.

Again, on page 3 at the top, would it not be a much greater improvement, down 10 per cent, if you took all the added construction site jobs in there and made your record look even better than—10 per cent is a good record, but it would be much higher, I think, if you had explained to us that you had more people in construction in 1989 and you certainly had an awful lot more in those years from 1965 to 1985. You had a lot more in 1985 than you had in 1965, just looking at the buildings that are going around this particular area, or Toronto, that we are familiar with, or even some places in small areas out in the rural areas like I represent.

Mr Zeidler: What you say is true, and I think the other variables in there are volume of workers. Volume of construction varies a little bit, but certainly the trend is increased. You have to take into account in, say, a dollar-volume increase the inflationary factors and things like that. Also, what constitutes a lost-time accident, I believe, has changed somewhere down the line so that legislation has affected some of what we do as well. But rather than complicate it with those other factors, all of which are true, we have just chosen to try as an industry to improve year by year and steadily lower the number of lost-time injuries and fatalities in the workplace.

Mr Mackenzie: On page 6 of your presentation you have, "The construction industry works on the premise that both employers and employees are responsible for ensuring a safe workplace," yet in the following paragraph you have,

"Under no circumstances do we feel the process could be improved by granting an individual worker the unilateral right to stop work, especially as the individual worker would be unaccountable to anyone for his decision."

I have to question you on two points there. What role, then, does the individual worker play, and how can you say that individual worker is not responsible to anyone? One, he has a certified level of training, better than much of what we have today, and two, he has to answer to his workmates on that construction site, especially if they end up not getting paid.

Mr Zeidler: Yes, although answering to his workmates may be as much of a drawback as it is an advantage. We are not completely sure what this individual is going to be like in terms of his training. We are also not sure what pressures he is going to come under. We think there is a difference in his being viewed by both labour and management possibly as a government narc, as opposed to someone who comes from the ranks, in our current labour-management dialogue. So yes, I have some question as to just how he will function, but it could be that his own workers will, on occasion, disagree with his move.

Mr Mackenzie: Just as they might with a certified management rep, although he is not as likely to be shutting down a site or raising it.

Mr Zeidler: It depends on whether you are dealing with a crisis situation. Many of our accidents occur in strange ways. You have to be trained to think what can happen. For instance, a lot of them occur off scaffolds, and funnily enough, the falls occur when the scaffolds are at low heights, the obvious thing being that when you are working at a lower level you do not have the nervousness that you would, say, working 200 feet up. Sometimes it is very difficult to see around what a chap is doing and be able to stop an accident before it happens. It takes a special training, but it is something that you really have to look at. You have to think about it, "What could happen to this individual?"

Mr Mackenzie: What percentage of your industry would be organized and what percentage would not be organized?

Mr Zeidler: I myself am not organized, although we have both, mixed union and nonunion, on any one of our job sites, and I am a general contractor. I am not sure of the statistics, but I am getting 60 per cent unionized and 40 per cent nonunionized. So a fairly large percentage, and I believe possibly a growing percentage, is nonunion.

Mr Mackenzie: One additional question: I presume that you are aware that the position you have taken in your brief here is not one that is shared. I cannot speak for the city of Ottawa, we have not had the building trades in Ottawa before us, but certainly the provincial building trades and other groups that have been before us do not agree with the construction industry proposition that you are putting with regard to Bill 208.

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Mr Zeidler: Yes, I am aware of that.

The Chair: Before you leave, on page 6 of your brief you state that "Under no circumstances do we feel the process could be improved by granting an individual worker the unilateral right to stop work." Does the individual worker not already have that right?

Mr Zeidler: Yes.

Mr Donovan: I am sorry, I was going to say that our understanding is that an individual worker has the right to refuse to work, but he does not have the right to stop the goings on of the construction site.

The Chair: Right. The wording here is perhaps bothering me in that it just does not talk about that. It just says "the unilateral right to stop work."

Mr Donovan: "Stop work," I guess, yes, that could be misleading. We mean stop the site, shut the site down.

The Chair: Thank you very much for your presentation before the committee.

Mr Zeidler: If I may just make one other point before I leave, I have been a director of CSAO for many years, I think more than I have been on the association here in Ottawa. I perhaps differ somewhat from some of CSAO's other directors in my view of union participation on our board of directors and, candidly, I am for it. As you know, there is labour representation on there now. They are seeking a 50-50 split. I have no problem myself with a 50-50 management-labour split, but I would like to see a swing vote by having a percentage of directors who are knowledgeable, say, of health and safety situations who could vote without creating a deadlock; in other words, who could break any deadlock that may occur.

I would also like to see nonunion labour represented with the union labour. I know the union people have said that this would be a difficult position to fill because of the very nature of the unorganized labour, but I do believe it could be filled.

The Chair: Thank you very much.

The next presentation is from the Communications and Electrical Workers of Canada. Gentlemen, we welcome you to the committee this afternoon and we look forward to your presentation. I think you know that the rules are 30 minutes for each presentation, so the next 30 minutes are yours. If you will introduce yourselves, we can proceed.

COMMUNICATIONS AND ELECTRICAL WORKERS OF CANADA

Mr Pomeroy: I am Fred Pomeroy, president of the Communications and Electrical Workers of Canada. We have about 40,000 members in our union, half of whom are in Ontario. We represent employees in the communications industry, the electrical and electronic industries and in both big and small enterprises. I am a member of the Premier's Council in Ontario for the Ontario Federation of Labour, and I sit also on the Canadian Labour Congress executive council. With me I have Gary Cwitco, who is a national representative in charge of health and safety with our union and is also a member of the Ontario Federation of Labour's health and safety committee.

I should tell you that, through Gary, we had input into the preparation of the Ontario Federation of Labour's brief that was presented to you last week, I believe, in London, and that we fully support the points that were made by the Ontario Federation of Labour in its brief. I am not going to read our brief word for word this afternoon. I am going to talk to the issues, instead.

The first point I should make is that when Bill 208 was initially introduced, it was not everything we thought it should be, but we thought it was a good basis for improving health and safety in the province. So we set about meeting with members of the provincial Parliament in May of last year, including the previous Minister of Labour, Mr Sorbara. During those meetings we expressed qualified support for the bill and we also raised changes that we thought ought to be made to make the law do what the government claimed it was intending to do with the bill.

Unfortunately, in our view, while we were busy doing that, employers were busy running a rather aggressive campaign against Bill 208 in an attempt to have it turned, we think, on its head. We think they were successful, given the kinds of amendments that have been put forward by the new minister.

In our brief, we address basically four issues: the training centre, the right to shut down workplaces, the question of equal rights under

the law and the right to refuse. I want to deal with each of those in turn. I will speak first specifically to the training centre which we have been involved with right from its inception. We were involved in the initial work developing the training courses and so on, and we have used it extensively to train our rank and file instructors, who in turn have gone back and trained our membership in various locals. In fact, we have even used those training programs for our union members in other parts of the country.

We think that the decision some time ago to give financial assistance to worker training in health and safety was a commendable one that has had positive results, but I must tell you that we are very concerned over the proposal to make the training centre's board a bipartite board. We are not opposed to bipartism as such, but we believe that bipartism works best when the two sides are both well equipped to participate in the process, and in our view the training centre is the vehicle for training workers to participate in the process on an equal footing.

The idea that there are no sides in health and safety is just nonsense, in our view. We think there are different points of view and different values that have to be reconciled, just as there are in other workplace relationships, and resolving these differences in a reasonable way that can be widely accepted in the workplace—and I stress that, “widely accepted in the workplace”—is what this is really all about. This is not going to happen if the two sides cannot develop their own strategy and equip themselves independently to do it.

I could use an analogy. I think hardly anyone would argue that unions or workers ought to meet hand in hand with managers to prepare for the collective bargaining process. In fact, it would be a sure recipe for that process to fail were that to happen, because the workers involved would have no confidence or faith in the independence of what their representatives were doing in the process. I think the same thing applies here. If we are going to meet as equals, we have to be able to prepare independently and we have to be able to develop our strategies for resolving issues, and to do that we need our own separate training centre.

If I could move on for a minute then to the right to shut down a workplace, I made the point that we believe workers and managers should come to the table equally well prepared to deal with the issues, and we think that also has to mean that they come to the table with the responsibility and the authority to resolve problems. The current legislation is based on a so-called internal responsibility system which to us means abso-

lutely nothing if the authority to effect solutions is not also there.

The original proposal to give a certified member the right to shut down a workplace, we think, was a good move towards balancing authority over health and safety in the workplace, but the new proposal which would maintain the right in a “bad workplace” but give management veto power in a so-called good workplace just does not make any sense at all, in our view—in our experience either.

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It is a specific condition that exists at a particular time in a workplace that should be the determinant of whether or not you shut down a workplace and not the track record of the employer. If an employer with a really good track record gets a worker killed or injured, it is not more acceptable than if the employer had a bad track record.

We believe an employer's track record can be tampered with in many different ways. We may have situations in some workplaces where whenever someone is injured he is still brought back to work, unless it is so severe he cannot make it to the job site, and he is put on light duty and there are very few reports made. We have other employers who follow the rules and report every single incident of someone being injured, and consequently, even though they have a much better record in the workplace, their record on paper looks much worse than the other employer who brings people back to work and pays them, just basically to sit around and do nothing.

So we think that a meaningful right to shut down a workplace is an important incentive to get employers to make much-needed changes in the workplace and we think it is going to be effective in causing employers to clean up the workplace.

We should not need more proof of the need for change than the statistics that we all know. One worker killed and 1,820 injured every working day is just an unconscionable record and one that obviously cannot be tolerated. We are not talking here about a scenario where management has been acting responsibly and workers have not and there is somehow a need to provide protection against abuse. We are talking about where management has the complete right to now shut down a workplace or move it or do just about anything you want with a workplace and we have the kinds of astronomical statistics that I have been referring to.

I should remind you that it is workers who are being killed and maimed in the workplace. It is not managers. It is workers' lives that are on the

line, and it should be workers who have the right to shut the workplace down if there is a dangerous situation in the workplace.

Moving on to the third point that we cover in our brief, the question of equal rights under the law, we are just absolutely totally at a loss to understand why farm workers, even when they work in a factory, are exempted from the law. I do not think anyone here would argue that the farm worker's life is worth less than someone else's working in another industrial setting in the workplace. I think it goes without saying that they have one of the highest accident rates of all workers. Excluding them from the provisions of the law does not make any sense whatsoever to us.

We also cannot understand why many public sector workers, such as police, firefighters and ambulance attendants, should have limits put on their right to refuse unsafe work. It just defies logic that these people can be trusted and given the responsibility to work in such dangerous and responsible jobs in our society, where in many cases other people's lives are involved, and then it somehow flows that they still cannot be trusted to figure out whether or not it is reasonable for them to shut down a particular workplace, particularly when in many cases it may be a training exercise that they are involved in and they still do not have the right to shut it down.

The right to refuse brings me to another one of our concerns, and that is, the minister claims that he is expanding the right to refuse by adding the word "activity." By defining it in a way that excludes the right to refuse in situations that could lead to repetitive strain injury, he is actually taking away an existing right that workers now have in this province. We firmly believe that the existing right to refuse jobs that could lead to repetitive strain injury should be maintained. In fact, in many of the workplaces that our members work in, that is one of the most common injuries that workers are faced with, so it is of particular importance to us.

I guess that covers the four basic points that we make in our brief. In closing, I should tell you that we take this bill extremely seriously. We see this as a very fundamental issue, the question of health and safety in the workplace, and I think that if we cannot resolve this in a way that gives workers meaningful input into the process, given that it is their lives and their health and security that is on the line, we have to start rethinking the way the labour movement participates in a wide range of activities relating to the workplace.

It is not unreasonable to give workers the tools and the rights they need to protect themselves. Workers have not demonstrated somehow that they are socially irresponsible. Any suggestion that it will be abused cannot be backed up with evidence. There is not evidence around to prove or demonstrate in any way that workers have abused any rights they have gained under health and safety laws in either this jurisdiction or other ones.

We believe that if the legislation is passed in its current form, or if it is weakened even further with the minister's amendments, it is not going to help us achieve the goal of a healthy and safe workplace and we are going to end up in a predicament of having to take each employer, one by one, at the collective bargaining table, which is going to mean that some people will make some progress, other people will make less and many people will be left holding the bag in the long run. We just do not think that is an acceptable scenario in this society, particularly in an economy as rich as Ontario's.

I urge you to act courageously, to improve the bill as it was presented, to ignore the amendments that we are opposed to and to do the things that are necessary to create a healthy and safe workplace in Ontario.

Mr Mackenzie: Mr Pomeroy, I presume you are aware of the letter from the Canadian Manufacturers' Association to the Premier (Mr Peterson) and the obvious alacrity with which he responded to the pressure from industry in this province. I am sure you are also aware of the fact that the previous Minister of Labour, knowing that the bill did not do everything labour wanted, was a hard sell, if you like, for the labour movement, urged the labour movement to go out and sell it to their members. This of course came right from the minister himself.

The very fact that we now have a new minister in effect gutting that, without any consultation—we have not been able to find a labour leader yet that they consulted on the changes. Do you see that as a betrayal of a request and commitment that was made to labour?

Mr Pomeroy: Certainly. They never consulted with me about any changes, if you are looking for another one.

Mr Mackenzie: You are the head of one of the major unions in this country.

Mr Pomeroy: Yes. We do not see any of these amendments as being improvements, we see them all as a betrayal.

Mr Mackenzie: Thank you.

Mr Dietsch: I am concerned about some of the comments in your brief. You outline in your brief with respect to the workers' centre and say that you feel the centre is threatened and that the bipartite board, "by definition, will destroy the unique and unashamed pro-worker stance." You further say that there is a recognition of "two sides, sides that have separate views, traditions and objectives."

"All of the statements made by well-meaning individuals that indicate there are no sides in health and safety simply do not reflect what we see daily in our relations with employers. There are different opinions and there are different values."

I guess it brings me to a difficult area that I have been wrestling with. You realize that the agency, as it has been proposed, has met a great deal of concern from management in relationship to how this agency is viewed to work and the proposed suggestion by the minister with respect to a neutral chair.

How do you reconcile, if you will, the major concerns of business—or maybe not-so-major concerns of business, but none the less concerns that have been reflected to this committee—relative to labour coming to the table to negotiate or to work out, to put hands on a partnership, taking the view that you have taken why there should not be participation in the work centres? You are making the case for business why you should not participate without a neutral chair for the agency. I do not quite understand where you are coming from in that regard.

Mr Pomeroy: I think you have to recognize that the adversarial system has not died, nor is it projected to die for quite a while yet in Ontario. In day-to-day relations between workers and their unions and employers in this province, probably even in unorganized workplaces, the adversarial system still prevails. You cannot dissociate health and safety and other issues like that from the fact that that system prevails for collective bargaining, grievance handling and a long list of other activities that go on relating to the workplace.

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What we are saying is that by having it equal representation on that committee and no third-party chairperson, the two parties involved are going to have to get busy and work it out between them, and the threat is going to be that if there is not a resolution of it at that level, government is going to have to take action. Neither party might wish that to happen.

In fact, that kind of activity is increasingly happening in our society. I am on the board of the Canadian Labour Market and Productivity Centre. We do not have a referee. We have the business community and we have labour.

Mr Dietsch: You are disowning the fact that it cannot work with the training centre for all those reasons, but you are projecting that it can work with the agency.

Mr Pomeroy: They are two very different operations, two very different *raison d'être* for those two organizations. The training centre is there to equip rank and file workers who are working in the workplace to do their job and to develop their strategy for dealing with the problems they face in the workplace. The other organization is set up to deal with policy items and so on on a broad overall scale. At that level, you are going to have a different group on either side.

Mr Dietsch: But in relationship to that, many have put forward the view to this particular committee that they view it as being all right to participate in safety associations, 50 per cent workers and 50 per cent employers on the agency, for the reason that they can sit down and discuss and learn from each other to understand the workplace, workers being able to enhance the employers' viewpoint, if you will, with regard to working on these particular things and the delivery of training by the workers' training centre. Perhaps employers could learn a little bit more by the understanding that workers have developed within this particular training centre as well. I guess I do not know how a worker changes his viewpoint so drastically from one setup to the other, because the associations are going to be doing the same sort of thing.

Mr Pomeroy: I think what you are suggesting is that we continue with the status quo, modified slightly.

Mr Dietsch: No, I am not.

Mr Pomeroy: Those associations exist today. The opportunity for employers to meet with people on the job sites exists today in the workplace, and it is not working.

It is funny. The people who have been in charge, if you want to put it that way, who have control now over health and safety in the workplace, by and large are management. It is those people whose track record is so wanting. It is those people who are here arguing that we should somehow have a third party involved in this, or that we should have bipartism in the training program.

We do not get to go and sit down in the back rooms of corporations when they are making their decisions and training their managers to decide what their strategy in the workplace is going to be and so on. We do not get to go and sit in on those things.

This has to be a credible organization that workers are going to have faith in. You can either set up some kind of charade that will look really nice on paper, and you will be able to say it is bipartite and it has all the frills and bells and whistles that you want on it, but that nobody in the workplace will believe in and will think it is nothing more than an Uncle Tom operation that is meant to look good, or you can set up something meaningful where workers are equipped in their own way, managers are equipped in their own way, and when they get together, they can educate one another. Management is not short of finding out what working people's opinions are on these issues and workers are not short of ways of being able to find out what managers' opinions are on these things.

Mr Dietsch: But I guess I still fail to understand. In respect to employers in this province, as you say, perhaps in your view, wanting experience as to how to deliver a service comparable to what the workers' centre delivers, did it ever occur to you that maybe being involved in the workers' centre might educate them to know how to deliver that just a little bit better, and that participation in this particular agency, or the particular reasons why you might want the workers to participate in the other safety associations—I mean, hopefully we are going to the table to share a common interest point, that being health and safety and better delivering what hopefully will cut down on some of the accidents and injuries and deaths in workplaces in Ontario.

Mr Pomeroy: Mr Cwitco wants to make a point on that, so I will let him.

The Chair: At that point, could we move on to give Mr Riddell a chance, Mr Dietsch?

Mr Dietsch: Yes.

Mr Cwitco: We have no objection to training employers. In fact, the workers' centre has run training programs for employers to give them a worker's perspective on health and safety issues. We have run training programs for the federal Department of Labour inspectors. The workers' centre has run training programs for the Ontario ministry inspectors.

The reason they came to the workers' centre was that the workers' centre had a different

perspective, had a different way of analysing the issues, had a different point of view, and they wanted to go to the source to find out what that point of view was. Hopefully, the fact that they went through that training has done what I think your intention is, to expose them to a worker's point of view, to a worker's analysis of health and safety, to a worker's analysis of technical issues within the health and safety parameters.

But what would happen if we ended up with those training programs being developed, not in an admittedly pro-worker fashion, but in some kind of watered down fashion that had to meet the needs of both the worker members of the board and the employer members of the board? We would lose that uniqueness, so what we bring to all of those organizations today would be lost, and that is what we are trying to avoid happening.

We think we need our own training programs so that when we go to sit down with the employers we will have our point of view straight so that people understand what is going on so that they can deal with the employers in a reasonable and intelligent and well-prepared way. That is what we are asking for. And if we can do that, then we will solve problems. When both sides come to the table at a health and safety committee well prepared and understanding the issues, we get them resolved. When the two sides come unprepared, or one side comes unprepared, then nothing happens. We want both sides to be prepared. We think we can solve problems in that way, but we have to recognize that bipartitism, as we say in the brief, by definition, indicates that there are two sides.

Mr Riddell: I have sat on this committee right from the very beginning. I do not think I have missed any presentation yet, and I guess I have reached the stage where I can say I have heard it all before, but one thing I have heard today somewhat astounds me and I am wondering if you are right. You are telling me that my farmers who work in the salt mines in Goderich, who work at Champion Road Machinery Group, who work at Northlander Industries and all these factories, have no protection under the Occupational Health and Safety Act. Are you telling me that is right?

Mr Cwitco: No, what we are telling you is that if they work in a plant that has an assembly line but running down that assembly line are mushrooms rather than a product, they are not protected. That is what we are telling you.

Mr Riddell: But that is not what you said. You have said farm workers, even when they work in factories, are completely unprotected. I chal-

lenge that statement, because most of our farmers now, in order to make a living, have to work in a factory, whatever that factory may be. I hate to say that, but that is the fact of the matter. I want to make sure that those farmers who are working there are protected. Do not just give me a mushroom factory, because you did not say mushroom factory here.

1700

Mr Cwitco: When they are working in a factory, they are not farm workers.

Mr Riddell: Oh yes, they are.

Mr Cwitco: Not under the act.

Mr Riddell: Many farmers, and I dare say farm workers who are also helping out with farm work, are also working in factories.

Mr Cwitco: I have been around almost as long as you have and I remember back in 1977 when you were successful in convincing this committee and the then minister to exclude farm workers from the act. There is a lot of history around here. I know that you are very interested in farm workers, but very clearly, if they are farm workers and they are classed as farm workers when they are working inside a factory—and that could be a mushroom factory or a commercial chicken farm that looks like a factory. It does not smell like a factory, but it sure looks like a factory in terms of its operation. It is all enclosed. It is not the old family farm, with mom and pop out on the tractor with the kids helping in the fields. That is not what we are talking about; we are talking about farm workers working in farming operations that are fundamentally factory operations, farm factory operations.

Mr Riddell: Well, it is too bad you did not say that. You did not say that in your brief.

Mr Fleet: He said it now.

Mr Callahan: Could I have a supplementary on that?

The Chair: Final point.

Mr Callahan: In my riding there is a manufacturing process called Maple Lodge Farms, where these people actually work on an assembly line with chickens and turkeys. Are they not covered?

Mr Cwitco: If they are actually processing the meat, killing the chicken and processing it, they are covered. But if they are a farm operation where they are growing the chicken, they are not covered. So that they have got this one building where they grow the chickens and the people who work in there may be working with assembly line and gears and chains where the food is moving

along this line. They are not covered. Move them over to where they start killing them and skinning them and eviscerating them, they are covered.

Mr Callahan: So the growers are out of luck and the cutters are under it?

Mr Cwitco: It is a peculiar definition. Farm workers are excluded from a lot of labour legislation. They are outside the frame of reference of the Labour Relations Act and the Employment Standards Act, I believe, as well.

In this issue, in health and safety, farm workers have one of the highest accident rates in the province. There are lots of farm deaths. There are lots of farm workers who get pulled into augers and lose arms, and other kinds of situations. They do not have a right to refuse, they do not have a right to a health and safety committee. They are unprotected by the Occupational Health and Safety Act, and we think that is unconscionable.

Mr Riddell: Many of those farmers are owner-operators. You know, I have heard right along it is never management who gets injured or killed. Let me tell you that if you were to take a look at the statistics, you would likely find that the people who are having legs taken off, fingers taken off, or even deaths, are the farmer-owners themselves.

Mr Cwitco: Then should they not have the protection of the legislation? If they are the people who are being injured, should they not be covered by the legislation so that there would be some form of protection against those kinds of injuries?

The Chair: We could continue the debate, but we will not. We are out of time. Mr Pomeroy and Mr Cwitco, we thank you very much for your presentation.

Mr Riddell: I am just coming alive, Mr Chairman.

The Chair: Yes, that is what is bothering me.

The final presentation of the afternoon is a joint presentation from the Ottawa Hydro Electric Commission and the Municipal Electric Association. I am not sure "joint presentation" is the right term, because—

Interjections.

The Chair: Order, please. There are two separate briefs from these two associations. Gentlemen, we do welcome you to the committee. We know it is getting late in the afternoon, but we are pleased that you are here and we look forward to your presentation. If you will introduce yourselves, we can proceed.

OTTAWA HYDRO AND MUNICIPAL ELECTRICAL ASSOCIATION

Mr Kropp: My name is Carl Kropp and I am presenting our particular brief on behalf of the Hydro Electric Commission of the City of Ottawa, Ottawa Hydro. I happen to be general manager and chief engineer there and come from about 32 years of experience with the industry.

Ottawa Hydro is a municipal utility with 130,000 customers and about 400 employees. Ottawa Hydro is also a member of the Municipal Electric Association. We understand that the Municipal Electric Association wanted to present a brief to your committee in Toronto but time was not available. Whereas, this association, the Municipal Electric Association, represents some 316 municipal utilities in Ontario, we felt, as a member of that association, we should give them some room to make a presentation during our time.

How we propose to proceed is that the Municipal Electric Association will say some words, I will then follow with a couple of comments perhaps reinforcing some things that Ottawa Hydro wants to bring to your attention because of a couple of particular circumstances and then I would suggest we go for some questions. I think there should be maybe 10 or so minutes left for questions.

I would like introduce to you, on my very far left, Carl Anderson who is the chairman of the Municipal Electric Association.

Mr Anderson: Thank you for allowing us to share Ottawa Hydro's time and thanks to Mr Kropp, who by the way is also president of the MEA this year, for sharing his time. What I would like to do now is introduce to you Don McKee, who is beside me, who is general manager of North York Hydro. He is the past president of the Municipal Electric Association but, more important, he is also past president of the Electric Utilities Safety Association.

Mr McKee: My name is Don McKee, and this afternoon I am representing the Municipal Electric Association, although, as Carl has said, I am also the past president of the Electric Utilities Safety Association.

Our brief, which was submitted to this committee on 9 February, goes into considerably more detail than I can cover in 10 minutes. However, I am going to endeavour to address a few areas of concerns and perhaps some alternatives for the committee to consider.

The minister has suggested many changes in the current Occupational Health and Safety Act. Among these changes is the formation of an

agency to oversee the operation and organization of safety and accident prevention associations.

A little bit of history: The Electrical Utilities Safety Association was formed back in early 1918, I believe, and it was formed at the request of employers in our industry. It was fully funded by these same employers through the auspices of the then Workmen's Compensation Board.

The funding required was derived as an added assessment over and above the moneys required to compensate workers involved in a compensable accident. This fact remains true today.

Over a number of ensuing years, and primarily when the Workers' Compensation Board formed the Occupational Health and Safety Education Authority, control began to be exercised over our safety association by using financial constraints even though the employer representatives on the board of directors wanted to increase the assessment for more effective safety and training programs. The Municipal Electric Association views this new agency as only exercising the same control and, in addition, with the ability to divert money from one association to another with less enviable safety records.

I am sure this committee realizes that the moneys expended by the Electrical Utilities Safety Association are collected from some of its members which are also publicly owned entities. I can assure you that our elected officials—Mr Anderson is one of them—carefully watch our industry safety association budget for effectiveness and improvement to the Workers' Compensation Board assessment level in our industry. The reduction in assessment level which we have had in several years means of course that there were fewer compensable injuries and suffering for our employees.

We cannot see that changing the composition of the EUSA board to a combination of worker and management will improve the effectiveness of the work of the association. The current board is elected by members for its dedication and commitment to safety. It is composed of representatives from electrical utilities, telephone companies, cable TV companies and contractors serving these industries. This group was formed because, although we provide different services, we share our plant facilities in many ways and it made sense to approach health and safety as a joint effort.

The workers and management of these industries have adopted the rule book as part of their union contracts or even, for our nonorganized members, as part of their everyday work practices. You will also find the use of the rule

book forms part of the regulations under the current Occupational Health and Safety Act.

We view the change in organization of the EUSA board as running the risk of confrontation and, together with the forming of the new agency, not giving this board the power to control its own destiny. We respectfully suggest that the committee recommend transfer of full fiscal and monetary authority to the boards of safety associations with the new agency only overseeing the results and having the authority, if required, to control budgets for ineffective spending or poor results.

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This association believes that the current legislation provides sufficient protection for the workers in our industry. As the committee can appreciate, working with energized high-voltage apparatus is a dangerous practice unless carried out by fully trained and competent workers using the proper equipment. I can assure you that, as an industry, we listen carefully to our employees' concerns, not only to protect our workers, but to improve on the reliability of service to the public which we serve.

The new act suggests that the certified health and safety representative will assist the worker in presenting his concerns, and perhaps this is true. The right to stop work, however, in our industry could mean a delay in restoring electrical and/or water service to the public, perhaps on subways, in a hospital, in a situation of downed power lines, a broken watermain or other emergent situations.

Often, our work is in poor weather conditions which are by themselves inherently dangerous. We therefore suggest that utility workers be exempted from the act, similar to police and fire personnel in subsection 23(1) of the current act. Alternatively, the provisions of subsection 23(2) of the current act could be expanded to exempt employees of municipal public utilities from the provisions of section 23, "Where circumstances are such that the life, health or safety of another person or the public may be in imminent jeopardy."

Our association members agree and fully support the use of health and safety committees. In fact, many of our members had committees prior to any legislation requiring their formation. The current proposals in Bill 208 to have joint chairpersons, time limits on recommendations and health and safety committees in employers of less than 20 employees only serve, in our view, to promote confrontation rather than useful health and safety initiatives.

We believe the legislation should require a system of alternating chairpersons who will be responsible for preparing agenda items to be discussed. Failure of either management designates or worker designates to fully discuss agenda items could then be referred by either side to a ministry inspector for assistance.

The 30-day requirement for compliance with a recommendation is totally unreasonable unless there is also provision for extensions of this requirement because of, for example, an equipment repair requirement or perhaps the requirement to have more relevant information as assistance in resolving the problem.

We consider health and safety committees in employers having less than 20 employees to be unreasonable and an unnecessary cost because of the close contact on a daily basis between a supervisor and a worker. Surely if health and safety issues cannot be resolved in this small a group, then the use of the committee will not solve the problem.

Although we have other concerns which we detail in our brief, I would like to conclude with some remarks on fines.

The idea that increasing the level of fines will improve safety performance in our industry is ludicrous. For many years, the Workers' Compensation Board has had a system of increasing assessment levels for employers with poor safety records. This system has provided more motivation to employers to improve performance than a \$500,000 fine imposed on one occasion.

In the case of our industry, a small utility being assessed a large fine will only result in a sharp increase in retail electricity or water rates, or actually put it out of business. However, an increase in the Workers' Compensation Board assessment rate, I know, will motivate the employer to improve his performance so that retail rates will not be affected over a long term.

We also suggest that fines collected be used to support the work of safety associations and, as well, to supplement the cost of ministry officials working with poor performers. The use of fines in this manner would signal to both employers and employees the government's commitment to advance the objectives of the legislation.

In view of the significant protections already afforded employees and the far-reaching obligations currently placed on employers under the Occupational Health and Safety Act, as well as the fact that associations such as the Electrical Utilities Safety Association are successfully advancing the interest of safety in the workplace,

the Municipal Electric Association questions the need for sweeping amendments to the act.

The minister has indicated that Bill 208 will provide the best legislation dealing with occupational health and safety in North America. We believe you already have far-reaching legislation and we believe that Bill 208 contains too many inherent flaws to be enacted in its current form. We believe that this committee should recommend a complete overhaul of Bill 208 and that when those changes have been drafted, they should once again be put to employers and other interested parties across the province for their comments and concerns. The bill in its present form we believe to be unrealistic, impractical and would create more problems than remedies.

We thank you for the opportunity to appear before you and express on behalf of our membership the serious concern and fundamental objections which the Municipal Electric Association has to many aspects of the proposed amendments to the act. I can assure you that the members of this association take their obligations under this legislation most seriously. We feel obliged, therefore, to speak out when we perceive that the government is proposing measures which are counterproductive and, we believe, even destructive to the goals which we all seek to obtain in the area of safety.

Now, Mr Kropp, maybe you could continue with Ottawa Hydro.

Mr Kropp: From our perspective at Ottawa Hydro, the existing act has served the purpose quite well. Since some changes are proposed, I want to comment on those changes, because obviously when you have something that is working quite well and somebody wants to change it, it makes you a little nervous.

First is the funding. Ottawa Hydro is a schedule 2 employer. In order to provide health and safety services we retain under contract the Electrical Utilities Safety Association. Last year we paid them \$104,187. By paying directly in this way we are able to control the quality and are able to ensure the use that meets our high standards. Essentially we pay for what we get.

Bill 208, in our view, proposes different funding methods. As currently drafted, section 10c places an upper limit of \$46.6 million, with an annual increment of 10 per cent, as a transfer from the Workers' Compensation Board to the new Workplace Health and Safety Agency, which in turn will allocate these funds to eligible organizations, such as EUSA, for program delivery.

First of all, that convoluted method of passing on money has to be of some concern, but more important, it is my understanding that the calculation of that \$46.6 million did not include expenditures of schedule 2 employers which are not presently members of EUSA, such as Toronto Hydro, Hamilton Hydro and Ontario Hydro. Accordingly, if all schedule 2 employers are to be included in EUSA, as appears to be the case under the act, there is going to be quite a dilution of services. There will be a significant deterioration in the services offered in that funds will be fixed but the client base will expand significantly.

Another concern is that there is no assurance that those payments that are payments to the Workplace Health and Safety Agency via the Workers' Compensation Board will in fact be given to EUSA for provision of health and safety services to us. Poor performers may well get a greater share of the dollars available. I will go back: we pay \$104,000 a year now, we know what we are going to get and we get what we pay for. It is extremely important.

Simply put, we are concerned that the present level of service provided by EUSA will deteriorate. I would request that you make the necessary recommendations to ensure that we continue to get full value for our money.

The other issue I want to talk about briefly is the joint health and safety committee, and I am addressing now the health and safety committee at the plant level. I am a little concerned that we are going to have health and safety committees with equal representation by both labour and management and that they are going to be co-chaired. My concern is not with equal representation; my concern is with the whole democratic process of trying to break a tie in the event of an issue.

We at Ottawa Hydro have had a very successful way of doing this. We have full representation by both people in equal portions, and what we do is we alternate the chairs. One year we have a labour chair, a worker chair, and the next year we have a management chair. So in any given year you could have a worker as a chairman and a management person as a vice-chairman and the next year the opposite situation prevails. We are very happy with it, it works very nicely, we have no difficulty. So I would say please look at that part of the act where you attempt to co-chair a local health and safety committee. I think you could run into an impasse and God knows how you would break the

impasse, because you have not provided for a method of breaking the impasse.

The other issue I want to address very briefly is refusal to work. I simply want to reinforce something that you have now heard from our association, and that is there are times when public safety has to be considered. The act apparently does not seem to consider public safety and the relationship to employee safety. Sometimes our men have to be like firemen. We have to do something to get the fire out when the wires are on the ground, that type of thing. So I would encourage you to take what actions are necessary to allow the public utilities to deal with issues where public safety is involved. I think you will find that the public utilities have had a great track record in their respect for safety, both from a management point of view and from a worker point of view. We have worked out the problem. Why do you not let us deal with it and not try to paint us with the same brush as everybody else is being painted with?

The other issue I want to talk briefly about is fines. I think that the 20-fold increase in fines is simply going to serve to traumatize the workplace, it is going to traumatize the worker and traumatize management, and that is not the purpose of this bill. The purpose is to foster and support co-operation between worker and management in the workplace. What you have done with fines I do not think will achieve it.

So I would like to leave it there. You have my brief in front of you which has more detail, and I would like to leave as many opportunities here for questions as we possibly can.

1720

The Vice-Chair: Mr Wildman.

Mr Wildman: Thank you. I would like to raise a question with regard both to your comments on the right to refuse and on the proposal for a certified worker rep.

You raise the issue of public safety and I recognize that. In the Ottawa Hydro presentation, on page 4, you talk about a fallen tree in an ice storm with live conductors on the ground and the need to respond to that and deal with it. I think we all recognize that. But if you do as you are suggesting, exempt public utilities completely from section 23, as is proposed in the Municipal Electric Association submission, then you are also putting the worker in a situation where he cannot even refuse if he finds a mechanical problem in equipment he is using. For instance, let's say, to go out to respond to this problem of the fallen tree, the truck is not mechanically sound. Surely the worker should have the right to

say: "No, we can't go in that truck. It's not safe to respond to this." If you give a full exemption, I do not see how that could be done.

Mr McKee: If I may answer that, we tend to agree with you. We do not want workers going out in unsafe trucks, particularly in the Toronto area in a bad snow storm, because everybody knows what that is like. That is a disaster area all by itself. So we would support that. What we have given you is an alternative, though. What we say is where someone's life, or where an emergency is in progress, yes, we may have to. When you talk about trucks, you cannot determine that that truck is unsafe until you get it on the road. Our problem with the certified worker—we do not have any problem with the worker's saying, "I don't want to take that truck because I drove it yesterday and it was unsafe." What we do not want to have happen is for him to try at one o'clock in the morning to find a certified worker and shut the whole job down.

Mr Wildman: The other question I had in regard to that is where you deal with the question of work activities. We have had a lot of discussion before our committee about that. Labour has been saying that the narrow definition is in fact a step backward from what the Ontario Labour Relations Board has upheld under the current legislation.

For instance, let's say you have someone who is doing a repetitive thing in one of your workplaces and there is an ergonomics problem. For instance, even if it is someone who is answering the phone in one of your offices and he or she is sitting in an uncomfortable position and is having to reach too far all the time, over and over again, to work the switchboard, surely the worker—or if you had a certified worker—should have the right to come in and say: "This may not be what some would consider imminent danger. This is a problem that if this is not corrected, this person is going to end up with tendinitis or problems that could be avoided. So unless it's fixed up, this worker is not going to answer the phone any more." Surely you can hardly argue that that is a legitimate request from labour, to say that it should be able to respond to these kinds of issues?

Mr McKee: I do not think that is the case. What we are suggesting is, the worker has that right already.

Mr Wildman: Individually?

Mr McKee: Individually. I do not think they need a certified inspector who may or may not be

familiar with ergonomics in the office place to make that decision.

Mr Wildman: Finally, if the individual worker exercises his right to refuse because he thinks he is in a hazardous situation, let's say the person suspects the truck is unsafe, then do you think it is legitimate to continue, as is the case under the current act, a situation where management could then go to another worker and say, "Your buddy has refused to operate this truck because he believes it unsafe because tie rod ends need to be replaced or whatever, but we have this problem with a fallen tree, and we have got to get out there; would you take the truck out"? Do you think that is a legitimate thing for management to be able to do?

Mr McKee: I do not think any good management would do that.

Mr Carrothers: Fascinating. I did not think the answer was that bad, just the question. I wonder if I could just continue a bit with the line of questioning Mr Wildman had, because I am not quite understanding the point you are making about the ability of the certified worker to stop work in relation to the fact that in many cases, or in some cases anyway, workers are going out into difficult situations, putting that alongside the fact that in your workplaces, if I understand correctly, at the moment, workers do have the right to refuse work, so they are not exempted the way police or firefighters are at the present time.

Mr McKee: That is correct.

Mr Carrothers: So let me ask you this. In your experience right now in your workplaces, have you had difficulty with workers refusing to take on work in those circumstances where you have got to put the wire up in a storm, or some other circumstance where the public need is a very important factor?

Mr McKee: I can only speak for my own workplace, and I have been there some 30 years. My recollection has been that probably since I have been in the senior part of management, I have had what I would call three refusals to do work by the employee. Two of them were quite legitimate, we listened to them and nobody else went and did that job. The third one, it turned out that the employee had a fear of high voltage, and others, his peers, went and did the work, and that is eventually how we found out this particular person did have a fear of high voltage. The other employees said, "Look, this guy is really afraid of his job," and we removed him completely.

I guess our fear is not the employees so much, because we have had good experience with that

part of the act; the certified worker, though, may come from an office environment, let's say, depending on how he gets into the job.

Mr Carrothers: I am not sure that is the case, though. I believe they are coming from the workplace, and that has been the control.

Mr McKee: The workplace in our place has an office environment.

Mr Carrothers: But would that not be under your control?

Mr McKee: What guarantees that the worker should be, for instance, a lineman? I guess that would be my question. A certified worker will not necessarily be a lineman.

Mr Kropp: I wonder if I might just comment on that as well, having had 32 years of experience in the industry. I have really never had a refusal to work. I have had situations many times where management and the employee looked at the situation in a storm and decided it was in everybody's best interest to wait. We spend a lot of time training our workers. We spend a lot of time working with management. We are committed to work safely. We are really, in that sense, no different from police and firemen.

When public safety is involved, I think you have to say these people are committed people; they are serving the public. We are not for profit and we are going to use damned good judgement. I think that that is what is being missed. I think this act is painting everybody with the same brush. As I said earlier in my talk, you should give the utilities some instances where they can deal with public safety, because you know damned well they are going to use good common sense. So there is an element of practicality, I think, that is missing in this whole thing.

Mr Carrothers: Although by necessity legislation does paint everybody with the same brush, they are very broad applications. Any law is like that.

Mr Kropp: We could go on and debate that at some length, which I would be pleased to do after the session here.

1730

Mr Carrothers: Maybe we should. But I guess I am still trying to understand because, unlike the police forces, your workers can refuse unsafe work. Policemen are exempted, to use the example you were using. They are exempt from the law as it presently exists. You have not had a problem at this point, and I guess I am just trying to understand. I take the point about the certified worker who may not have come from the same work environment, although, given that the

workers are choosing it, I wonder whether that might be unlikely to happen. I am just trying to sort of understand why this would not work, when in fact it is meant to reinforce that individual's right to refuse work in the first place and that right has not proven to be a problem to you. You do not have the same blanket exemption that the police or others do.

Mr Kropp: You never know who the certified worker is going to be. If it is a person who is popular in the workplace, he may well be an office person trying to judge what a lineman does. You know, I shudder to think of that, because some of the things that linemen do look very unsafe; on the other hand, some things that office workers do look very unsafe to linemen. You have got to be a little bit familiar with the action.

Mr Anderson: One of the things that I see as an elected representative is that the outside workers we have, the line people, have a far more dangerous kind of job and they have far more accidents in our industry than anyone else, and yet they are likely the most safety-conscious people in our whole organization. But it is because of the nature of their work that they run into difficulties. But I think if you look at the record of the Electrical Utilities Safety Association and of the utilities in this province, it is an outstanding record. As one who serves breakfast at a safety breakfast every year to our workers, as a chairman of an organization, I really care about safety, and I know the workers in our organization really care about safety too. They are not afraid even to come to me if, for instance, McKee would never listen to them, but I have never had one in 15 years come to me and say anything about safety.

I think some of the problems come when you look at something like somebody who is complaining that the air conditioning system does not get smoking out. We have solved that; we have a nonsmoking building. But some of those kinds of things, if you were to shut down an operation because somebody felt it was unsafe for smoking—and it is quite conceivable that it could happen—it may or may not be reasonable, but we have worked that one out, because we had people in to investigate and we have made some changes.

We have a very complex type of situation to work with in terms of the electrical utility business in this province. As we said, for us to fall under the same workplace as everybody else

is ludicrous, because we are sort of in between on the public safety thing, yet we have an office kind of situation which falls into a group and then we have another in-between group of workers who fall into a different situation again. It is a very, very complex thing, and I do not think any bill is really going to solve it.

Mr Dietsch: The Ottawa scenario, where you alternate chairmen, I guess I do not quite understand how that rules out the nature of confrontation other than, is it that when labour, for example, is the chair that management has an extra vote? Is that what happens or vice versa?

Mr Kropp: Basically, chairmen are there to break tie votes, are they not? We have never had the situation arise, because everybody gets along very well and the thing works quite nicely. But if the chairman acts in a partisan way one year, then the next chairman is going to act in a partisan way the next year and they know there is nothing to be gained by it. So the committees have operated very fairly, very well. Yes, in the one case management or labour could have an additional vote in any given year, but it is shared on an equal basis. Again, it is the desire to do things in a safe way that dominates, but if an impasse should develop, under the present bill the whole thing grinds to a halt. Under our method of doing it, at least either labour or management is going to have its way that particular time and the process will go on. You take your licks and you—

Mr Dietsch: That has not happened?

Mr Kropp: That has not happened, but as general manager I am prepared to accept it if it happens.

The Chair: Gentlemen, we thank you for your presentation this afternoon. We appreciate it.

May I urge members and commend to them a brief that we have distributed to you. It is by Clarence Dungey from the Ottawa-Carleton Canadian Union of Public Employees. It is not a long brief and I commend it to members. I wish we had had time for another presentation, but we did not.

We are adjourned until tomorrow morning at 9 am in downtown Kingston. Tonight the bus will leave about a quarter to six out front, a Carleton minibus. So if members could be out front for that, you will be thrilled with the ride to Kingston. Thank you very much. We are adjourned.

The committee adjourned, at 1736.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Neff, William A., Vice-President, Technical Affairs

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Knight, Dave, Health and Safety Officer, CUPW

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From the Canadian Paperworkers Union, Locals 34 and 73:

Foucault, André, National Representative

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Gravel, Bruce M., President

From the Canadian Union of Public Employees, Ontario Division:

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From the Canadian Shipowners Association:

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From the Public Service Alliance of Canada:

Hurens, J., Executive Vice-President
Hall, Louise, Section Head, Health and Safety Section

From the Ottawa-Carleton Home Builders' Association:

Sanscartier, Robert, President, S & S Electric

From the International Association of Machinists and Aerospace Workers:

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Publications

No. R-13 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on Resources Development

Occupational Health and Safety Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Tuesday 13 February 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

Published by the Legislative Assembly of Ontario
Editor of Debates: Peter Brannan

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 13 February 1990

The committee met at 0910 in Confederation Room B, the Howard Johnson Confederation Hotel, Kingston, Ontario.

OCCUPATIONAL HEALTH AND SAFETY STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Chair: The standing committee on resources development will come to order. As many of you know, the resources committee was given the task of holding public hearings on Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act. We were given that task by the Legislature as a whole. Because we are an extension of the Legislature, there are certain rules that must be followed when the committee holds hearings across the province. One of those rules has to do with signs. We do not want to be unduly picky, but we simply cannot conduct hearings when signs have sticks attached to them, and I would ask that the signs with sticks attached be removed from the room before we can proceed. That simply must be done. I appreciate your co-operation in that regard.

There are some other rules that we follow. One of them, and it is an important one, is that people who appear before the committee do so at our invitation. We want those people here; we want to hear their views, and even though you might disagree most profoundly with those views I think you would agree that they have a right to express them before a committee of the Legislature. I would ask that you respect that and let them make their presentations without any harassment from people in the audience. We would not allow anyone to hassle or harass you if you were making a presentation and would simply ask that you respect that when other people are doing it.

I would like to introduce the members of the committee. You might know that we are in the same proportion, roughly, as the membership in the Legislature, which means in this committee that there are six Liberal members, two Conservative members and two New Democrats, and of course—

[Interruption]

The Chair: —you did not let me finish—a neutral chair. The members are: Doug Carrothers from Oakville South; Mike Dietsch from St Catharines-Brock; David Fleet from High Park-Swansea; Ron Lipsett from the riding of Grey; Jack Riddell from the riding of Huron; Doug Wiseman from Lanark-Renfrew; Margaret Marland from Mississauga South; Bud Wildman from Algoma; and Bob Mackenzie from Hamilton East. I am Floyd Laughren. I represent the riding of Nickel Belt.

[Applause]

The Chair: There is no cheering in the Ontario Legislature.

We do indeed have a full agenda, and it is a serious matter that we are undertaking. When we have concluded with the public hearings next week, we sit down as a committee and take the bill and go through it clause-by-clause, examining every single clause to determine what, if any, amendments should be made to that bill. When we have finished that task, we then report the bill back to the Legislature, and that will be done on 26 March. At that point it will be reported back to the Legislature as a whole for final disposition. We will see in what form it goes back. We cannot anticipate that at this point, because we have not started the clause-by-clause process. But that is the task that we have undertaken, and we have had very, very good presentations all across the province.

We are in Kingston today, of course, the rest of the week in Toronto and then next week we finish with hearings up in Thunder Bay and in Dryden.

I would be remiss if I did not introduce Larry South, who is the member of the Legislature from Frontenac-Addington. Larry, welcome to the committee hearings this morning.

We should begin immediately, because we do have a full agenda. We have to adjourn a little earlier this afternoon because the members are catching a flight back to Toronto, so our last presentation is at three. The first presentation is from the Kingston Frontenac Home Builders' Association. Mr Armitage is here with his colleagues. It is, I believe, a joint presentation with the home builders and with the Kingston

Construction Association, so they are going to make their presentation together. It will be a double presentation and instead of the regular 30 minutes it will be an hour. Those will be the first two presentations on the agenda. They are simply doing them together, and part of that is a video, I understand.

Gentlemen, we welcome you to the committee. We look forward to your presentations, and the next hour is yours.

KINGSTON CONSTRUCTION ASSOCIATION

KINGSTON FRONTENAC HOME BUILDERS' ASSOCIATION

Mr Armitage: Ladies and gentlemen, my name is John Armitage and I am the first vice-president of the Kingston Frontenac Home Builders' Association. I would like to introduce those present today representing our two associations: John Corsi, past president of the Kingston Frontenac Home Builders' Association; the fellow with all the hair is Barry Smith, the president of the Kingston Construction Association; Denis Brisebois, director with the Kingston Construction Association; Kevin Kelly, past president of the Kingston Construction Association; and Al Fyke, who is past president of both associations.

We are all going to participate in reading our brief into the record to you. I will be doing the introduction, and then each of our members will take one section. That will take approximately 15 minutes. Then we would like to show you a video that we have produced that will take 11 minutes and then we would be open for questions, if that is fine with you. With that note, I will handle the introduction and then we will proceed through.

The Kingston Construction Association represents 230 member firms. The Kingston Frontenac Home Builders' Association represents 160 member firms. Together we represent the majority of construction employers in eastern Ontario's Ontario Labour Relations Board area. We support the more effective involvement of workers and employers in the improvement of health and safety in the workplace, and we believe in better quality training for workers and management. We agree with the improvements to health and safety underlying Bill 208; however, we disagree with the content of this legislation.

This legislation fails to effectively achieve these objectives. Although our concerns are numerous, we will limit our comments today to the following issues: (1) construction should be

exempted from Bill 208; (2) proportional representation; (3) stop-work provisions, and (4) our industry has not been adequately consulted.

We have no doubt that in this committee's travels across Ontario it will have heard the same themes over and over again. If this legislation is to proceed, we support amendments suggested by the Council of Ontario Construction Associations, the Ontario Home Builders' Association and the Canadian Federation of Independent Business.

Mr Corsi: Exemptions: The construction industry in Ontario is a world model in terms of performance, education, training and the fostering of joint labour-management involvement within the framework of provincial legislation covering the workplace. We have appendices A and B, which you can look at later.

Historically we have shared and pursued the government's objective of providing a safe working environment. We endorse any meaningful endeavour to improve construction safety in Ontario. The proposed amendments are directed to the workplace in general, with no mechanism contemplated that will allow for industries that set standards in safety performance. We believe that the legislation, as drafted, is based on the idea of a fixed work site. Recent amendments to accommodate our industry are inadequate.

0920

In order to ensure critical mass, the legislation should have recommended the reference to the jobs which involve 50 people and are greater than six months in duration. In other words, they should retain the word "and." For example, it is not unusual for a sewer and watermain project with six to eight employees to extend longer than six months. Such a project fails to have sufficient critical mass of employees to effectively implement this legislation. Another example would involve a typical house, which may extend to more than six months in duration but never involve more than 50 people.

The construction industry should be recognized for its uniqueness, just as it is in Ontario's Labour Relations Act, and therefore should be excluded from the provisions of Bill 208. Consider the following. Construction sites are temporary. Construction sites are in a constant state of change with respect to the number of trades and employees. The introduction of experience rating has led to a significant improvement in the self-policing of construction sites.

Our industry performs, and under appendices C, D, E, F and G you can look at those later on.

Recently the Workers' Compensation Board announced that nine of 11 rate groups affecting our industry will pay lower assessments in 1990. Of the two main groups affecting our industry, 854, which is general construction, will be reduced by 1.3 per cent, and 864, low-rise construction, will be reduced by four per cent.

Over the past 22 years, our industry has experienced a 47 per cent reduction in accident frequency, a 58 per cent reduction in medical aid frequency and a 64.5 per cent reduction in fatalities. According to the Ministry of Labour publication *Construction Safety in Ontario* dated August 1989, our industry has the best safety record in the world. This legislation could erode the effectiveness of the best construction safety agency in the world. If it ain't broke, don't fix it. Tampering with our industry is tampering with success.

No doubt by now you have heard the expression "carnage in the workplace." Please, let's put this in perspective. According to the Ministry of Health statistics, there were 68,462 deaths in Ontario in 1987. During the same period, 42 of these deaths were in the construction industry. In 1989, there were 35 deaths in the construction industry. One death is one death too many, but is this "carnage in the workplace"? Similarly, 929 children under the age of 12 months died in Ontario in 1987. Is legislation the answer? Can common sense be legislated?

Our industry will continue to strive for the best possible results in workplace safety. We are a world leader, and the statistics speak for themselves. Inclusion of our industry in Bill 208 would be a regressive step.

We recommend that the construction industry be exempt from the provisions of Bill 208.

Mr Smith: Proportional representation: Bill 208 proposes the creation of a Workplace Health and Safety Agency. We support the principle of user participation in the formulation of rules and regulations governing our industry. In this regard, we support the ongoing participation of labour.

If, despite widespread opposition, this legislation is to proceed, we respectfully submit that the makeup of the proposed workplace health and safety committee should proportionally represent the various interest groups in the workplace. The announced intention of selection of workers from only the unionized sector is fundamentally flawed and will prohibit some 70 per cent of Ontario's workforce from an effective voice.

In the document entitled *Questions and Answers*, Occupational Health and Safety Reform,

1989, dated 24 January 1989 prepared by the Ministry of Labour, the Minister of Labour suggests that our workplace is disorganized and "by its very nature, the unorganized portion of the the labour force is difficult to represent. We have yet to find an effective way to do so." This is simply not factual. We would be prepared to provide a pool of workers.

To ignore the needs of 70 per cent of Ontario's workforce violates our basic rights and democratic principles. In addition, the selection of unionized workers should proportionally represent the interests of the various unions in Ontario. No one union should monopolize the representation for all unionized employees.

With regard to the selection of employee representatives, the selection process should proportionally represent the mix of big business and small business in Ontario.

Our recommendation is that if this legislation is to proceed, we strongly urge that the safety agency proportionally represent its various interests in Ontario; also, that the CSAO retain its autonomy, programs and budget.

Mr Brisebois: Stop-work provisions: Bill 208 proposes the creation of a worker police force. We are opposed to the unilateral power of certified workers to shut down work sites. The unprecedented power is contrary to the stated goal of closer co-operation between workers and employers.

A co-operative health and safety partnership in the workplace is essential to improve performance. The current Occupational Health and Safety Act permits the worker the right to refuse work that he or she may consider dangerous without the fear of retaliation.

If this right has to be strengthened, we suggest that it be replaced by the right of immediate conference, as proposed by COCA. This would ensure a quick resolution on the job site with a minimum of disruption to the work site. Workers should be better educated to make them better aware of their current rights to refuse work and to recognize dangerous work situations.

We strongly believe that the employers in our industry share in the goal of a safe workplace. Construction supervisors have received extensive training on safety issues, and initiate actions daily to avoid dangerous situations.

Consistently poor performance by employers should be subjected to intense scrutiny by the Ministry of Labour. In the most extreme cases, the employer should pay for the presence of a Ministry of Labour inspector to ensure compliance with all regulations of the law.

The current proposal creates an elite category of workers. To give workers the individual right to judge personal safety issues detracts from management's ability to fulfil its responsibilities and reinforces confrontation on the job site. We feel an effective penalty for wilful misuse of this power should be introduced.

The Ministry of Labour has claimed that the experience of the mining industry shows that the right to stop work has been used responsibly. This is a misleading statement. This stop-work power has been negotiated with only eight mining companies in Ontario. In cases of deemed danger, the worker pursues joint action with the supervisor. The unilateral right of workers to order employers to stop work, if granted, would be unprecedented.

Calculate that at least 450 certified workers should be required to satisfy the construction industry alone. The unique nature of our industry and the unique mobility of our workforce could lead to difficulty in obtaining trained workers for required projects. The potential for blackmail of an employer resulting from a shortage or unavailability of certified workers should be a serious concern, not to mention further items that would be included in the bargaining process during labour negotiations.

Our recommendation is that if this legislation is to proceed, the unilateral right of certified workers to order work stoppages must be withdrawn; that the current stop-work provisions of the present Occupational Health and Safety Act be more fully communicated to workers and employers.

Mr Kelly: Nonconsultation: Despite claims to the contrary, our industry has not been adequately consulted. If there has been full consultation, why is your committee being inundated with formal presentations from interest groups all over Ontario? Surely an adequate consultation process would evolve into some form of reasonable consensus.

Effective consultation would have discovered that our industry would welcome more vigorous inspection of Ontario's construction sites. According to the Ministry of Natural Resources, Ontario employs some 750 conservation officers but only employs 84 construction health and safety inspectors. Surely Ontario's workforce deserves protection equal to that given to fish and wildlife.

More adequate consultation would tell you that Ontario's workers currently have the right to stop work on construction sites without fear of

retribution. Perhaps more worker education is needed.

Our recommendation is that more adequate consultation with our industry is required prior to the formulation of any legislation.

0930

Mr Fyke: To summarize, although well intended, Bill 208 is bad legislation, particularly for our industry. Should the government proceed with this legislation, the construction sector should be exempt or at the very least the unique nature of our industry should be recognized.

This legislation would encourage confrontation on the work site and therefore would fail to achieve the stated goals of workplace health and safety, namely, participation, education, training and responsible use of knowledge and authority. The government would be shirking its responsibility as a mediator and regulator for construction safety in Ontario. This role would be replaced by big business and big labour.

This legislation would render our industry noncompetitive, first in the prefabricating sector, and secondly, by increasing costs to potential clients contemplating locating in the province, as demonstrated in our previous brief and video presented to the minister, Mr Sorbara, and his staff in May 1989.

The substantial sums of money required to train thousands of certified workers would be better spent in educating the workforce. In order to ensure critical mass if this bill proceeds, it should apply to those work sites that have both 50 or more workers and are of greater than six months in duration.

If Bill 208 goes into effect this government will find itself the unwitting participant to the unionization of Ontario's workforce, the disintegration of worker-employer co-operation on health and safety issues and a decrease in productivity on the work site.

Mr Armitage: Mr Chairman, with your permission we would like to now show your committee our video.

The Chair: I look forward to that.

Mr Armitage: It has about a 15 second lead-in so it will just take a minute for that to start while everybody gets turned around and settled in.

[Video presentation]

0944

The Chair: Mr Armitage, do you wish now to proceed to the question and answer part?

Mr Armitage: Yes, Mr Chairman.

The Chair: Thank you. A number of members have indicated an interest. Mr Mackenzie.

Mr Mackenzie: On page 9 of your brief you state: "More adequate consultation would tell you that Ontario's workers currently have the right to stop work on construction sites without fear of retribution. Perhaps more worker education is needed." It seems to fly in the face of your concerns about blackmail and misuse of the right to refuse. I would like to know if your association here in Kingston feels that the right to refuse that we currently have has been abused.

Mr Armitage: No, we would agree that the workers have responsibly used the right to refuse under the current legislation. As a matter of fact, we feel that right should be strengthened. We feel that employers and workers should receive better training in that right. If there is a failing, we feel the failing has been in the inadequate message given to our employees about the right to stop work under the current legislation.

Mr Mackenzie: Are you aware of the hassle, I guess is the best way I could describe it, we had in 1978-79 when the current Bill 70 was being promoted and finally legislated in Ontario? The biggest single uproar from management groups, employer groups and construction groups such as yours was that the legislation would be abused. There was an uproar on that. I remember the committee hearings back in 1978-79. "Chaos in the workplace" was one of the expressions used, which has not happened. Given that, I am wondering why there is the current concern over the present legislation, where you will have more and better trained certified worker representatives on job sites. Some of the courses that are going through now are excellent courses and literally hundreds of workers are being put through them.

Mr Armitage: Yes, and we would agree that currently we do not have chaos on the work site. There is no question about that. Our concern, though, that the current proposal will create what we have called a worker police force, in that a few élite workers will receive adequate training to be certified.

The real way, the most effective way of preventing injuries on the job site is to make sure that every worker on that job site is trained and is aware of the hazards and the risks of the job site, particularly in an industry like ours which is by its very nature a hazardous industry. To focus the training on just a small number of the workers in the workforce, we think would be ineffective in achieving the goal of the ministry of improving construction safety in Ontario.

The further concern we have here is that our industry is a transitional industry. We typically

peak in our workforce during the summer months and we have a valley in the number of workers in the winter months, so our workers have come to expect, in our industry, to be laid off in the wintertime.

As I hope we demonstrated in our video, part of the concern we would have is that a worker in our workforce would be trained and become certified. We work typically on many different job sites throughout this part of Ontario. The presentation that we made took the hypothetical case of a contractor who needed seven certified workers to carry out his business, laid off five during the winter and only one came back. This concern is really more than just a concern about abuse of the powers; it is a concern about finding enough people to allow us to even carry out our business.

Mr Mackenzie: I am not sure developing a pool of certified health and safety workers—it is one of the most popular courses the union movement is engaged in today—is the problem you think it is. Probably a lot of your association is nonunion, but I am sure you are aware that the building trades in Ontario have taken a position diametrically opposed to your opposition to this bill. They also have serious questions about participation in the Construction Safety Association of Ontario and point out that there are only 13 worker reps on a 100-man board. They do not feel that they have the say or the influence in that particular association and have also told us very clearly that if your guideline of 50 workers in six months that you are requesting is acceded to, it will eliminate 85 to 90 per cent of the construction sites in the province of Ontario, certainly not giving the additional coverage that is needed.

I think the figures point very clearly to the need for better health and safety legislation in Ontario. I wonder if you have any response to the number of sites that would not be covered.

Mr Armitage: I think there are a couple of points you made that we would like to respond to. The 50 and 6 provision, as we understand it, only refers to the need to have a certified worker on the site. Correct us if we are wrong, but we believe that the majority of our job sites will still be required to have a safety committee. The job sites that have 20 workers or more and extend to more than three months, we believe will still have to have a safety committee.

Perhaps a large majority of work sites will be exempted from the requirement that this worker police force have the right to shut down a job, but there will still be effective participation by

employees and management in these job site safety committees.

A second point I would like to respond to, and you may be surprised that I say that this is one we agree with the unions on, is that in our presentation under the heading "Proportional Representation" we believe that management and labour should be proportionally represented on organizations that oversee our industry. We feel that proportional representation should extend right through the entire makeup so that, yes, half of the representatives would be workers, half would be employers; the worker representatives should proportionally represent the ratio of union and nonunion in Ontario, should proportionally represent the various unions in Ontario and should proportionally represent big business and small business in Ontario. So on that principle, we do agree.

Mr Mackenzie: Why have you not moved before now, if you are so concerned about the unorganized workers, to see that they are represented in numbers? There has been no move by management to do it. Indeed, the only real representation where there is some effect in safety is the Construction Safety Association of Ontario, and there, as I say, there are only 13 worker reps on a 100-man board.

Mr Armitage: I would allow CSAO's record in improving safety performance in our industry to stand up to a test of any other association anywhere else in the world. Numbers presented to you by the Ministry of Labour, prepared by the Ministry of Labour, tell you that you have under your thumb right now the model for the world. I think there is a problem with us in Ontario in all kinds of things, and in Canada. We are always looking at other parts of the world and saying, "Well, gee, we should do it like they do it in New Zealand or like Sweden" or something else.

This is one case where we as Canadians can be proud of ourselves because the rest of the world is looking to us and saying, "How are those guys doing that and what can we do to equal their performance?" Yes, perhaps more worker representation would be effective, but I would submit to you that the record of CSAO is a record that is envied around the world. One death is one death too many. One injury is one injury too many.

I can tell you in Ontario, again, in our industry, we are on a program called experience rating, which I am sure you are all familiar with, under the Workers' Compensation Board. When we as an employer have a lost-time injury, we pay. The last statistic I heard was that when an employer in our industry has a lost-time injury,

even if it is for one day, the effective cost to that employer is something like \$7,000 in his record. That number has varied. So this whole smorgasbord of legislation, safety committees, education programs and experience rating is working.

Mr Mackenzie: You say that your industry has not been adequately consulted, and yet almost all of the major concerns in terms of the right to refuse, everything, I guess, but the representation, covering construction workers and building sites under this legislation has already been watered down by amendments that we are told the minister intends to move. I take it that you are not satisfied, that even with the amendments the minister intends to move or has moved before this committee, this bill would not be good enough as far as the construction association is concerned.

Mr Armitage: I would like to direct the response to Mr Kelly.

Mr Mackenzie: Just before you do, I should point out that in the 15 years I have been in the House, I never had more letters from an organization in my life than I had from construction companies objecting to Bill 208. Obviously the government got them as well and it is obvious that it also showed in the presentations made by the manufacturers' association and other groups to this government, because it has acceded to most of their requests.

Mr Kelly: I think the number of responses or letters that you have received and the government has received pretty well speak for themselves, that adequate consultation did not take place when the legislation was prepared.

Just to give you a little background, our group met with the previous Minister of Labour, Mr Sorbara, last May. We asked them how the legislation was prepared and whether they could indicate to us what members, what groups, etc., were consulted at that time to put it together. This was in the month of May. To date we are still awaiting the names of the groups that were consulted to put the legislation together.

In the background paper that was prepared by Dr Shulman, there are some clauses in here —there are many clauses, but one caught our eye, under "Consultations." It says here: "There were 80 groups representing a broad range of Ontario workplace parties. These consultations have demonstrated that there is general agreement with and support for the basic tenets upon which Bill 208 is based." Now the word "tenets," basically defined, tells us that people are in favour of better health and safety. There is no question about it. But to the uneducated people

who are reading this thing are saying that there are 80 groups out there that are in full support of Bill 208.

One member of our committee who is not with us right now talked to Dr Shulman's office and asked what the names were of the 80 groups that were in favour, because we know quite a few that were opposed. In order to get 80 that were in favour, we feel you would have to have had at least 200 groups to present their cases. By making sundry phone calls, the gentleman did finally get in touch with Dr Shulman. He said, "Yes, I will get together the list and I will send it to you," which he did. There were 11 names on the list. He reported back to our committee and said, "This is what I got."

So another member of the committee again phoned Dr Shulman, who was out of town, phoned back a few days later and he said, "Well, I did not tell the gentleman that I was going to send him all the names." He said he was going to send some of the names. Well, 11 is far away from 80. Dr Shulman assured the man, "I will get you the names." A couple of days later—and I say a couple of days later; if these 80 groups were really there I do not know why it took several days to get the response—however, when the response came through there were 30-odd names on the list. I have a copy of the fax that was sent to the gentleman. The names are listed here, of which the objectors we personally know of number nine of the 38 names and of which one name is mentioned twice. So really there are 37 names on the list.

Mr Mackenzie: So in effect you feel you have been betrayed just as workers feel they have been betrayed in terms of the drafting of this bill.

Mr Kelly: I would say the word "betrayed" is a very strong word. I would say that we were not consulted. Our industry is unique in itself because of the transient nature of the various people who come on a job at the beginning. They leave and another gang comes; it stays for a while; another gang comes, etc. In our brief we mention that the bill would require 450 certified workers. That is just to get it started. But bear in mind that for 450 certified workers there also have to be 450 management people.

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Mr Dietsch: Are you members of the Council of Ontario Construction Associations?

Mr Armitage: No, not all of us. The three members of the Kingston Construction Association are; the three members of the Kingston Frontenac Home Builders' Association are not.

Mr Dietsch: Would members in your organization be members of COCA?

Mr Armitage: Yes, various would be members. I should explain that COCA is the council of associations, so if you belong to the Kingston Construction Association, then yes, you belong to COCA.

Mr Dietsch: I find your comments with respect to the consultation somewhat interesting because when COCA presented before us, obviously representing somewhat very similar views if not the same views, obviously, because you say you support its brief, I do not remember the gentleman's name who was with us, but I personally asked him the question with respect to consultation and he indicated that he was part of a group that had dialogue over the makeup of the bill. You are the first group, out of all the construction groups that have been presented before us, that has talked to us about lack of consultation. I am wondering whether it is lack of consultation with the ministry or lack of consultation with COCA that seems to be the problem.

Mr Armitage: Okay, I will duck that question and let Mr Kelly handle it. He is the past president of the Kingston Construction Association.

Mr Kelly: It is unfortunate that the gentleman who is in charge of this part of the background research that was carried on is not available this morning, but I will do the best I can to repeat his words.

When the first 11 names were received, this caused a little bit of inquiry on our side and it was decided to make a phone call again. In the interim our people did talk to COCA and told them what was received. Again, it appears the whole story is not being told. What COCA said to us was, yes, it was invited to participate after the initial draft of Bill 208 was made, and COCA and several other groups that did attend disagreed with the majority of the items that were in the draft legislation at that time. COCA told the government at that time, "This is not right and that is not right," and COCA told us a month ago that all the recommendations it had made in the draft stage were not considered.

Mr Dietsch: So in relation to the dialogue—I know we can dig up the name of the individual who was before us because it will be in the Hansard record—he participated himself in this group. Albeit I recognize there was a difference of opinion between labour and the groups that represented business in this makeup of this committee, there was some general agreement on

principles, and the individual expressed very clearly in his answer that there was definitely some disagreement on some of the makeup of the particular areas within the confines of the bill. I will have that name for you before you leave this morning.

The other point I would like to raise is, you talk about the in-depth training you provide for your supervisors and I would like to ask you what in-depth training you provide for your workers who are on the sites. Is it comparable? Is it the same? Is one better than the other?

Mr Armitage: Speaking for the house building industry, and I can really only speak for my own company, every construction supervisor has attended safety training courses put on by the Construction Safety Association of Ontario. What we do in our company is give the training responsibility then to that supervisor for our new employees who come on the job site. What we have done through the Ontario Home Builders' Association is write, with the assistance of CSAO, a workplace safety manual which we have requested that every employer in Ontario, of the some 3,000 employers represented by our association, adopt. And in that safety manual, which I took part in drafting, by the way, are detailed instructions for the new worker coming on the job.

We have sponsored, through the Kingston Frontenac Home Builders' Association, skilled labour, masonry and carpentry courses at St Lawrence College. As a matter of fact, here in Kingston we did the first program in all of Canada a few years ago under the Canadian skills training program when Flora MacDonald was the Minister of Employment and Immigration. The biggest part of these courses, and the most important part for these people coming to these courses, is safety. We need to do a better job, and I will concede that to you, of training our workers. I do not think that a person can sit before you and honestly say that a perfect job is being done. I would say an attempt is being done, awareness is being raised in our industry, but we still have to do a better job.

Mr Dietsch: I fail to understand, where an increase in worker training enhancement, after your saying you agree that there should be a better training process put into place and a better training job done, where the use of the certified worker, an individual who is going to become experienced and well trained on both the labour and management side, is going to create a difficulty for you within the construction industry.

I want to point out that in the construction industry there have been some improvements, the increase in individuals working in the workplace. There also has been an increase in accidents and deaths have remained at a fairly high level. What we are trying to do is put together legislation that is going to be applicable to all industry out in the workplace. There is some increase from 12,000 in 1983 to I think over 16,000 in 1989. Albeit that there have been some improvements, as you suggest, I guess my concern is, you are quite right that this is the most advanced legislation in North America and in fact one of the ones out there, but it does not mean that we can remain constant. It does not mean that we should stop from our ongoing challenge of making it as best we humanly can. I guess I fail to understand where the certified worker is going to interfere with that.

Mr Armitage: Mr Kelly would like to respond to the question and so would I. I would ask everybody to turn to appendix G in the brief, if you could. It is the last page in the brief that we have prepared.

I would like to take issue with the statement you made that accidents are increasing. You look at appendix G. Our industry is outperforming every other sector in Ontario. Our per cent decrease in injury frequency since 1965 is the best. If we look at the previous two appendices, you will see in appendix F that in the last five to ten years the injury frequency has been at a decreasing level.

If you go to the appendix before that, appendix E, man-hours have increased 50 per cent in Ontario since 1983. Our lost-time injuries have not increased at that same rate and our deaths have actually decreased. So despite a booming business, with man-hours going up 50 per cent, we are performing. To say that accidents are on the increase may be true if you are counting the number of accidents, but it is not true if you relate it to the number of thousands of man-hours worked in the industry. The frequency, as measured by the Workers' Compensation Board and by the Ministry of Labour, is decreasing.

Mr Kelly: You asked many questions at one time there and I will try to remember all the ones that you did ask. You told us that even though our record is good, we have to continually strive to improve it, and we agree.

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However, we feel that this Bill 208 has so many bad things in it that it is not going to lead to a better safety record. I would like to make reference to the workplace hazardous materials

information system program, which was in effect about a year ago. By virtue of the WHMIS documents, the average worker on the site has been trained in material safety. In order to work in the construction industry, to work in any industry, one must have complied with about a four-hour concentrated instruction course on what WHMIS is all about and the identification of various materials and liquids that are used in industry. This is the kind of thing we are recommending be done.

You take, let's say, a large construction site, the Goodyear plant in Nanapanee; I think every one is very familiar with it. That building is about a quarter of a mile long from end to end. What we are recommending and what we are encouraging is that the 150 employees or the 100 employees who are working on that site, from start to finish, which represents maybe 40 or 50 different construction companies, because the roofers leave and the painters come and the structural steel guys come for a couple of weeks, etc.—if you have 1, 2, or 10 certified workers who have the knowledge, the background and the understanding of what is an unsafe condition, they would be running around all day long pointing out to other workers on the site, "Hey, you, don't lift that up because that is unsafe," whereas if each worker was given a basic training program then they would know themselves that the item they are going to do or the activity they are just about to undertake would be an unsafe condition, and they should go and get some help or they should go and get another tool.

The Chair: I am sorry to break in here, but we are rapidly running out of time and we have not given the other caucus an opportunity to have a question. I am sorry about that.

Mr Kelly: That is quite all right. I know we started late, so that is fine.

Mrs Marland: I just want to correct one thing that has been said and you were told, that you were the only group that had complained about no consultation. I want to assure you that there have been any number of groups that have complained about the lack of consultation on this bill. The irony, I guess, is that there are two groups affected by this legislation, the employers and the employees, and neither of those groups wants the legislation as it is.

The question I want to ask you was that you have talked about the transient nature of it—I think even those of us who are not in construction recognize that—and the difficulty with trades coming on and off the job sites. Surely with other forms of legislation, both federally and provin-

cially, that have affected your industry the people who draft legislation, you would suppose, would recognize that particular aspect of your industry, the transient aspect.

I am just wondering if with any previous legislation that would have such a tremendous impact on your industry you had been consulted. You see, the Canadian Manufacturers' Association has written a letter saying that it was going to call its friends in the government the next week for a meeting. Mr Mackenzie has the letter—I have it somewhere but I do not have it handy now—where it says, "We'll call you next week because this isn't what we agreed to." I am just wondering, from your point of view, whether you have been consulted satisfactorily previously on other legislation and whether part of your frustration is that you have been shut out in this whole process as it affects you and your employees.

Mr Armitage: Speaking for the home building industry, the style of the government of the day is to not listen and we in Ontario are a frustrated industry. We have written a housing policy for Ontario and each of you has received that by now. It costs us \$100,000 to do that. Why should we as an industry have to write a housing policy for Ontario? We have a government that does not listen to its constituents and that is why we are frustrated.

It is not just Bill 208. I could give you a list of all kinds of legislation affecting our industry in the last five years where we may have been consulted, but we certainly were not listened to. The government set up this great committee on the rent review process. It was a committee of landlords and tenants. It took an awful lot of work and an awful lot of sweat, and they finally agreed on recommendations. Those recommendations have not been implemented, all of them, so we are frustrated because this government does not listen.

The Chair: Mr Armitage, I thank you and your colleagues very much for your appearance before the committee, and in particular—I am sure I speak for members of the committee—for the obvious effort you put into the presentation, and it showed. We appreciate that very much.

Mr Armitage: We have a copy of the video that we will leave with the clerk of your committee.

The Chair: We are now ready for our next presentation, which is the Kingston and District Labour Council. We welcome you to the committee. We are pleased you are here and look forward to your presentation. I think you know

that the next 30 minutes are yours. If you will introduce yourselves, we can proceed.

KINGSTON AND DISTRICT LABOUR COUNCIL

Mr Wilson: My name is Gary Wilson, president of the Kingston and District Labour Council. On behalf of the council and our 10,000 affiliated members, I am pleased to welcome the committee to Kingston for these important hearings.

Before I introduce the other members of our delegation, I would like to wish your committee a good hearing, partly on the order of good sailing. I guess our concern is that good hearing does not just come from ears working in good order; it is the predisposition to hear.

We are very concerned about a letter that Laurent Thibault wrote to Premier Peterson on Bill 208 where he says, "I hope that changes to Bill 208 can be made before the groundswell of opposition by our members and others in the business community grows out of control." It seems to us that when the Liberals perceive that labour might be growing out of control, they call for the cops; when business grows out of control, they call for a rewrite. We think that is what has happened to Bill 208 and we are adamantly opposed to the way this has developed.

What we would like to do in our presentation is to say what the problems are in the Kingston area, but in his letter Thibault also talks about democracy and we would like to point out that any democracy that occurs in the workplace is there because of the efforts of unionized men and women. I would say the same thing holds for health and safety. The level of health and safety we have in the workplace now is because of the efforts of organized union men and women, and it is on that basis that I would like to present the other members of the delegation to proceed with our point of view on Bill 208.

To my right is Ken Signoretti, executive vice-president of the Ontario Federation of Labour. We are very pleased to have Ken as part of our delegation just to remind the committee that our interests are reflected by organized workers across the province. To Ken's right is Ms Angela Madden from CUPE Local 1302, the health and safety officer for the workers at Queen's University library. To Angela's right is Charlie Stock, vice-president of the labour council and president of Canadian Auto Workers, Local 1837, at Northern Telecom. We will begin with Ken Signoretti.

Mr Signoretti: All I am going to do basically is read a statement on behalf of the Ontario Federation of Labour. We presented our brief at the first meeting.

As the executive vice-president of the Ontario Federation of Labour, I wish to make a few comments once again to this committee. As we stated on 15 January 1990, Bill 208 in its original form was not a bill that labour would have written, but it placed before us principles that we believed could lead to amending the legislation to make Ontario the leading jurisdiction in health and safety. But the amendments that the minister introduced in October to appease the Canadian Manufacturers' Association, the Canadian Federation of Independent Business and the Council of Ontario Construction Associations will not take us forward.

1020

At several hearings the Liberal members of this committee have stated that even with the proposed amendments, Bill 208 will still place Ontario in the lead. We wish to disagree. You state that Bill 208 will mean that an additional 20,000 workplaces will have joint health and safety committees. However, the Minister of Labour's own advisory council survey on joint health and safety committees in Ontario concluded: "Another important concern is the issue of workers' ability to influence health and safety matters and the responsibility which should be attendant to increased worker influence. A number of our conclusions suggest that Ham's"—the royal commission's—"conclusions of 10/76 still apply: that workers lack the power to play a full role in the internal responsibility system."

Merely adding to the number of joint committees without giving workers the ability to act to protect their brothers and sisters through the right to shut down an unsafe operation will not take us forward. We are provided with a written response, but the bill does nothing to change the ultimate management veto on all joint committee recommendations.

The government states a commitment to partnership, yet the imposition of a neutral chair prejudices this partnership to be ineffective. You base your entire philosophy on the workplace parties getting together forcing self-compliance, and yet it is clear that you do not believe that the workplace parties at the agency level can work together.

Allowing the safety associations to determine their own representation and to allow them a greater degree of self-determination will essentially mean that the opportunity the agency would

have had in directing training and research in the province will be undermined. It is clear in many of the management submissions to this committee that they do not want any changes in their management-controlled safety associations and will use this right to self-determination and representation to ensure that their associations continue to serve their needs, as stated most clearly by the Ontario Hospital Association.

The restriction on the right to refuse an unsafe activity to one of imminent danger will take us backward. The United Electrical, Radio and Machine Workers of Canada has placed before this committee evidence that the ministry has upheld individual workers' rights to refuse unsafe activities that would lead to long-term chronic repetitive strain injuries. Referring repetitive strain injuries to a joint committee for resolution will do nothing since there are no regulations concerning workplace design to which worker members can appeal in persuading the employers. There are no regulations because industry did not respond to the minister's invitation to establish a bipartite industrial regulations committee, a promise that was made to labour several years ago.

With a stroke of the pen, by increasing the number of employees to 50 and the duration of the site to six months, the minister has effectively removed 80 per cent to 90 per cent of all construction sites from the right to certified members. The minister gives construction the joint committees and then condemns them to the current practice by bowing to the construction industry.

The provision of training is an important feature of the bill, but unfortunately training, like information, is now power. The right to act to protect yourself and others is what will change our workplaces. The removal of the right to shut down and the restriction on payment for individual workers refusing will not only not take us forwards, but will take us backwards from the present practice of full pay during the steps of a legitimate refusal.

The increase in fines is certainly a welcome incentive if there is an aggressive prosecution policy, but a study just released in the state of Victoria gives us some concern. We know now that even with a \$25,000 maximum, the average fine in 1987-88 was only \$2,346, less than 10 per cent. In the state of Victoria in Australia, where its 1985 act increased the fines significantly, it actually led magistrates to record fewer convictions and impose fewer and lower fines. In fact the percentage of the maximum fine fell from 25

per cent to only nine per cent with the increase in the maximum.

If these prosecutions are not complemented with administrative penalties or citations that can be issued on the spot for less serious violations not involving accident, injury or death, then employers will enjoy even greater freedom from prosecution and conviction than at present.

Labour across Ontario cannot and will not accept this betrayal after more than 10 years of waiting for occupational health and safety reform.

Ms Madden: My name is Angela Madden. I am the health and safety representative for CUPE Local 1302 and the co-chair of Queen's University central joint occupational health and safety committee. I am here to tell you why there is need for reform to the Occupational Health and Safety Act and why Bill 208 is not enough.

Before I began work on this presentation, I felt I should speak about the one concern affecting most of those protected by the Occupational Health and Safety Act. There is no one problem. There are many, but I will have to keep this to one particular incident.

On 11 December, only days after the tragic shooting at l'Ecole polytechnique in Montreal, a bomb threat was received at Douglas Library. Eighty-three of the library technicians whom I represent work in that building. All of the others working in that building are also represented on the library's joint health and safety committee.

The safety officer, who doubles as the business officer for the library, was informed of the suspected incident shortly after 9 am. By noon the building had been evacuated. This is an incident that the library administration claimed to have taken seriously. If I asked anyone in this room what to do in the event of a bomb scare, not a single one of you would say, "Send the staff around to verbally ask people to leave the building without mentioning the nature of the emergency." I would bet most of you would choose the same method recommended by the library's joint health and safety committee as a result of the previous bomb scare. For those of you have not already guessed, we recommended that in a similar emergency it be treated the same as a fire: Pull the fire alarm and leave the building.

In fact the library's fire evacuation procedures manual, which was updated in May 1989, had a cover letter from the very same business officer who was informed of this bomb threat, which reads in part, "It is important to remember that while these are primarily issued in case of fire,

the same procedures should be followed at any time emergency evacuation of the library is needed."

You are wondering what happened, are you not? Well, they did the same thing that they did the last time there was a bomb threat. They sent members of the library staff to evacuate the building and when the bomb squad arrived, they instructed the staff supervisor to accompany the police while searching for the bomb. Where, you must be asking, was the health and safety rep? Well, I was at work in another building. The business officer did not feel that there was any reason to inform me of the incident. I found out about the bomb threat by means of an electronic mail message on 12 December, the following day.

The fact is there was no bomb. The building did not blow up and no lives were lost. Did you notice how this story did not start with, "Once upon a time"? That is because those stories always end up with "and they lived happily ever after." The way things are now we will not live happily ever after and some of us may just not live. We need tough reform.

Mr Stock: I wish that Larry South had stuck around and listened to what maybe the workers he represents had to say this morning instead of the construction association.

As president of Canadian Auto Workers, Local 1837, and vice-president of the Kingston and District Labour Council, I would like to welcome the committee to Kingston. Local 1837 represents a good cross-section of labour council affiliates. We are an amalgamated local union representing over 700 workers and the workers we represent come from five diverse areas.

They manufacture communication wire and cable at Northern Telecom. They also represent the clerical and technical office workers at Northern Telecom. They assemble light rapid transit vehicles and components at UTDC Inc Millhaven, Can Car Kingston Works, which people here should be familiar with. It was formerly Venture Trans, a provincially owned crown corporation of which I believe the provincial government still owns 15 per cent or thereabouts. They manufacture automobile exhaust systems at Bosal Canada Inc and they also manufacture military trucks at UTDC-Kingston Defence Works.

The concerns you are about to hear are, we feel, concerns of workers in the province. Examples in particular relate to Canadian Auto Workers, Local 1837. In addition some of our brief is an endorsement of the Ontario Federation

of Labour's 19 amendments and the Canadian Auto Workers national union amendments submitted to the Honourable Gerry Phillips, Minister of Labour, on 28 November 1989.

Everyone here must understand the need for progressive reform in occupational health and safety. Since the act came into effect in October 1979, more than 2,500 workers have died on the job. These are figures you are going to hear and statements that I am sure you have heard before. We feel very strongly in this area in support of the position that has been taken and these figures speak for themselves. I think there is a need to repeat them.

1030

One worker dies an average of every working day in Ontario. Enough workers were injured in Ontario in 1988 to fill Maple Leaf Gardens every night for 30 consecutive nights. To 30 November 1989, 434,997 injury claims have been submitted; that is 1,820 workplace injuries every working day in 1989 and 277 every working hour. In 1987, more than seven million days were lost to production in Ontario due to occupational illnesses, injuries and deaths, seven times more than were lost to strikes and lockouts.

We as workers wonder why there are almost twice as many conservation officers in this province protecting fish and wildlife than occupational health and safety inspectors protecting us workers.

At the workplaces represented by Canadian Auto Workers Local 1837, the worker health and safety representatives have shown a strong commitment by attending training courses on their own time, achieving certification from the Workers' Health and Safety Centre in level 1, level 2 or the instructor level certification. These worker representatives have common problems which we feel could be corrected by Bill 208.

At the Urban Transportation Development Corp, Millhaven, problems have occurred with a dust containing isocyanates. The Ministry of Labour was informed, but the response time was such that the company had the substance cleaned up before the inspector arrived.

At the UTDC Kingston defence works, employees have experienced problems with nausea and dizziness from exhaust fumes. The Ministry of Labour investigated and performed air sampling tests for two days. The worker representatives complained about the method and the conclusions of the tests to no avail. Ventilation is still a problem at this location.

At Bosal Canada, the employees have had a considerable number of problems with paint

fumes, welding fumes and heat stress. Most of these could have been alleviated by proper ventilation. The ministry was contacted on four occasions with workers' concerns, the result being only one order was issued by the inspector.

At Northern Telecom, the issue of ventilation has been raised with the Ministry of Labour inspectors, but the worker representatives had no success in convincing the inspector to write an order against the employer. Also of concern at Northern are occupational illnesses, repetitive strain, etc.

Several workers at Northern Telecom are victims of occupational illnesses. We feel with the added emphasis on activity within the right-to-refuse section of the act, employers would be more considerate in implementing ergonomic changes in the workplace. We further believe the end result will significantly reduce the number of workers with repetitive strain, lower back injuries, carpal tunnel syndrome, etc.

We feel progressive action by the government in strengthening the Occupational Health and Safety Act will reduce the number of incidents and injuries at all workplaces in the province. The cost of ergonomic changes surely would be less than the extremely high costs associated with workers' compensation claims and lost productivity.

We are opposed to the minister's amendment of a full-time neutral chairperson, which will make the agency a tripartite organization. We support the original provision in Bill 208 for a bipartite agency with full-time co-chairpersons from labour and management and six part-time directors from both labour and management to direct training requirements and research.

We are seeking an amendment of the bill which would enable our members on the bipartite Workplace Health and Safety Agency to determine the representation on the boards of directors of all the safety associations, workers centre and the two occupational health clinics.

The minister further proposes the creation of a business advisory committee to advise the board on relevant matters, such as cost-effectiveness. There is no mention that labour will have a role in the committee, which means that employers have yet another vehicle to influence the agency.

Unionists are very familiar with the word "cost-effectiveness." Our concern is the quality of training in relation to one-sided budget restraints. There must be quality attached to training. Many employers hire overpriced consultants with programs which do not satisfy legal requirements. Workers cannot hope to achieve a

balance in terms of quality training unless there is a balance in the makeup of the advisory board structure.

We support the certified worker representative having the right to stop work. In labour's view, this provision is necessary and long overdue for the protection of workers. We feel the certified and presumably well trained representative requires more authority. Therefore, we support the following amendment: A certified worker member who has reasonable grounds to believe that (a) provision of this act or the regulation is being contravened; (b) the contravention poses a danger or hazard to a worker; (c) the danger or hazard is such that any delay in controlling it would cause serious risk to a worker, or (d) any danger or hazard is such that any delay in controlling it will cause serious risk to a worker, may direct the employer to stop work specifying the work or the use of of any part of the workplace or equipment, machine device, article or thing that shall be discontinued.

This amendment would provide the certified worker the same mandate as other workers, which the other workers currently have under the Occupational Health and Safety Act, which states that a worker may refuse if he has reason to believe a danger exists.

We endorse a further amendment that ensures that there is either an agreement between the labour and management certified members or the inspector must be called before a stop-work order is cancelled.

Clearly, employers have taken issue with the right to shut down, stating that without-merit abuses will occur. Since 1978, when workers were given the right to refuse, to date there is no evidence to support their arguments. In fact, the opposite view is taken by workers. The current situation exists with numerous deaths and injuries, including the rise in compensation and industrial disease.

Many employers, including Northern Telecom, where I work, shut machinery down on a regular basis for supervisors to engage in quality and productivity talks with workers. Northern Telecom views this process as a progressive, Japanese style of ensuring a good product. Paying workers for lost production is a nonissue. If all employers adopted this progressive attitude where workers' health and safety was concerned, injuries, work-related illnesses and death surely would decline.

We support the addition of inspectors to enforce the compliance and speed up the system of monitoring workplaces in the province.

My father was a worker. He was a steelworker and he worked at Alcan Aluminum in Kingston. My father lost his right arm at Alcan. I have a brother who is a paraplegic. I can relate to people when they get injured. He was a painter who was six foot two. He is now three foot seven. My mother was hit by a car. So I can relate to accidents, whether they be being hit by a car or accidents in a workplace. There is nothing we can do to change the fact that my father lost his arm. There is nothing we can do to make my brother walk again, and there is certainly nothing I can do to bring my mother back, but you people have the power, you have the ability and you have the mandate to do something constructive in this province to look out for workers and their families.

In closing, workers have viewed Bill 208 as progressive and constructive. This view is based on a recognition of possible changes through amendments. The changes proposed by the minister are far from progressive or constructive, and we as workers ask you to seriously consider our point of view when reviewing this matter.

On behalf of the Kingston and District Labour Council and the Canadian Auto Workers, Local 1837, we thank you for this opportunity to express our views on Bill 208.

The Chair: Thank you very much. We have only about five minutes left, so I would urge members to be brief.

Mr Wildman: I want to thank you for a very comprehensive and moving presentation. There are a couple of things I would like to clarify.

The previous presenters took issue with the statement that the certified worker has been negotiated in collective agreements in the mining industry. They stated that that unilateral right to shut down by the worker representative was not correct. It is my understanding, representing the area, that indeed in collective agreements at Inco, Rio Algom and Denison at least, if not others, worker inspectors have been negotiated and have been in operation for some time and in fact have led to lower incidence of accidents, which both management and labour would attest to. Perhaps, Mr Signoretti, representing the Ontario Federation of Labour, you might be able to comment on whether or not that is correct.

Mr Signoretti: That is absolutely correct. In fact, it does work despite what all the people say about the doom and gloom in the construction industry. I listened to them a little earlier. In fact, the worker representative does work and it is quite effective. I think that in the presentation from Inco, and I was not in Sudbury at that time,

but I understand from its presentation that it was quite satisfied the way things were working. They could work to improve it too, but yes, it does work.

Mr Wildman: Just one other question. There have been a lot of presentations by management and business before our committee concerned about representation for nonunion workers on safety associations and on the agency. Can you confirm that we have approximately less than 20 worker representatives on the current safety associations in the province out of hundreds of boards of directors representing mostly business?

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Mr Signoretti: Yes, that is true.

Mr Wildman: Is it not interesting that if they were so concerned about nonunion workers, they have not voluntarily appointed them to those boards?

Mr Signoretti: I made a statement in the January meeting that we felt that in fact it does not work. I think Gord Wilson has mentioned the fact, and it is our policy, in fact. As far as the federation is concerned, we represent the non-union workers in industry. I say that because our convention clearly does that. When we talk about increasing the minimum wage, most of our members are not affected by the minimum wage, but nonunion workers are. That is a policy of the Ontario Federation of Labour, in fact, to increase the minimum wage. There are many areas in which we do those things. Yes, in terms of representing the nonunion workers, we feel that we represent them.

One other thing that I think the construction industry was talking about is that governments are elected by 35 per cent of the people. It would be interesting if, all of a sudden, those people who did not vote for the government of the day decided we did not want to pay our taxes or we did not want to do anything else and we did not want to abide by any one of the laws.

Mr Dietsch: Some members do not get that much.

Mr Fleet: The 35 per cent argument is one I am very sensitive to. However, given the time I have, let me focus it on a particular point that was made early in the brief about the fact that certain Liberal members, and again I am sensitive to this one, have asserted that this bill, even with the amendments proposed by the minister, is still a significant advance. I followed your presentation very closely and I frankly still adhere to what I said before.

One of the reasons I do that is that I really just do not understand your suggestion that the issue of imminent danger or immediate danger somehow is a step backwards. The existing act provides in subsection 23(3) for three different provisions on the right to refuse. There is the right to refuse if the operation of the machine is going to endanger or is likely to endanger the worker. There is a second provision that says if the physical condition is likely to endanger the worker, and the third provision is that if either the operation of the machine or the physical condition is in contravention of the act and is likely to endanger another worker. That is what those three tests boil down to.

Those things are not going to be affected one way or another by Bill 208. What Bill 208 proposes in its written form is to add a fourth provision about a work activity likely to endanger the worker. The minister is saying—because of problems with the impact of repetitive strain injuries typically as opposed to, say, lifting problems, he wanted to add the word “immediate,” but just to that new provision. It would not affect the existing act.

I have gone through this on my own to try to understand in what way there would be any loss of existing rights. I frankly cannot find any way that workers' existing rights would be negatively impacted by the addition of what the minister has proposed. Furthermore, when I have put the proposition to a number of different workers about repetitive strain injuries, the bottom line in terms of response has been that they generally are not seeking to stop work in the same sense right that moment. It is not that crucial, but they want to make sure it happens at some point.

Because you have design problems, it may not be that your injury will occur in the next minute or day or week, but it might happen over a period of years. I accept that that is a significant problem, but the solution to it would not appear to be to stop work instantly but rather to have a process that leads to an eventual change in the source of the problem, ie the design of the machine or whatever it might be.

I am wondering if you can please respond to that.

Mr Signoretti: But you still go back to the individual right to shut down.

Mr Fleet: The right to refuse, yes.

Mr Signoretti: I guess basically what we are saying, and I raised this, Mr Fleet, at the January meeting if you recall, is the individual right to refuse does not work. I mean, it is there and it sounds great. The reality of it is that most

workers will not shut down or not do anything because they come along and they are intimidated for whatever reason. It is no different from your wanting to do something and you have a lawyer representing you, if you will. The worker safety representative becomes a lawyer in this particular instance and represents that person. When you go and do some business, you want somebody to represent you, and that way it is done in a more effective manner.

Our basic concern is that while in some instances workers have refused to work or have shut down, the vast majority of them will not do it, and in fact, the ones who do it are the ones who are trained and the ones who understand the process.

The Chair: I am sorry to intervene at this point, but we are out of time. Mr Wilson, Mr Signoretti, Ms Madden, Mr Stock, we thank you very much for your presentation this morning.

The next presentation is from the Canadian Paperworkers Union, Kingston and area, representing a fairly large number of locals. Gentlemen, we welcome you to the committee this morning. You know that you have 30 minutes, and if you will introduce yourselves, we can proceed.

CANADIAN PAPERWORKERS UNION

Mr Guenette: My name is Denis Guenette. I am the staff representative for the Cornwall-Kingston-Trenton area. With me from the city of Cornwall and representing Local 338 of the Canadian Paperworkers Union is Glen Grant, president, and Cam Wood from the health and safety committee at Domtar Cornwall. Our submission will be just adding on to the previous one, and we will go right into it.

The Canadian Paperworkers Union represents over 2,000 workers in the Cornwall to Trenton area. We appreciate this opportunity to express our view on Bill 208. We hope that you will take what we and other unions have to say seriously. We often get the impression that these hearings are just window dressing and that the government has made up its mind about legislation and makes a show of consulting those who will be affected.

In the case of Bill 208, it is the worker who will be most affected. Therefore, it is our opinion that matters the most. Employers are affected by occupational health and safety legislation when it costs them more money, but surely no one in this committee would claim that profits are more important than people's lives. Even if safe working conditions cost employers more money, they will recover it over time in the form of lower

workers' compensation premiums. We believe that better occupational health and safety conditions are a win-win situation.

With Bill 208, however, workers lose. The statistics on occupational health and safety in Ontario are frightening. Since the present act came into effect, there have been nearly two million workplace injuries which resulted in lost time from work. That is the official figure and we all know how understated that is. There have also been 70,000 permanent injuries recognized by the Workers' Compensation Board during the same time. Finally, there have been well over 2,000 workplace deaths, a figure which everyone agrees is greatly understated.

You would think that these figures would shock the people of Ontario into demanding that workers be better protected. We are saddened by the obvious fact that the general public has little concern for the workers' lives. This makes it even more important that the government show leadership in this area. Whether people recognize it or not, the cost of poor health and safety working conditions is far too high for a civilized society.

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We have laws requiring car passengers to wear seatbelts. We cannot smoke cigarettes in our workplaces. Our food is inspected by public health officials. Our doctors and nurses must be highly trained and certified, and so on. But when it comes to working, we are left to our own devices in a so-called internal responsibility system which has obviously failed to protect us.

Will Bill 208 change this sad situation? Not at all. How can it? It is simply a Band-Aid slapped on a gaping wound, a poor attempt to make it look like the government is doing something. Bill 208 does not change the basic flaws in the law. Workers are still not entitled by law to safe and healthy workplaces. The law only entitles them to engage in a conflict with their employer if it is clear that their safety is in immediate danger.

We have an industrial relations system that is, by nature, adversarial. But this does not work in health and safety matters. This is what the government must change if it is serious about occupational health and safety. Of course, conflict will always be necessary for self-defence. Workers must have the right to refuse to do unsafe work. But this right would seldom be necessary if the workplace was safer to begin with. That can only happen if the workers themselves have more control over the conditions of work which will affect them physically.

There are several ways that the occupational health and safety system could be improved with reduced conflict between individual workers and their employers.

More ministry inspectors: The Ministry of Labour admits that there are not enough inspectors to do an adequate job. By their own figures, inspectors only carry out about 69,000 inspections a year among Ontario's 179,000 workplaces. There is no suggestion that the number of inspectors will be increased.

At the same time, the government's white paper on occupational health and safety reform states that in 1987 alone \$1.45 billion was paid out in workers' compensation by the Workers' Compensation Board. This does not take into account work-related injuries and diseases which were compensated in some other way, such as through private insurance or medicare.

Just by using the WCB statistics, it is clear there is a strong economic argument for hiring more inspectors. If we took just 10 per cent of the WCB payments, we could hire approximately 2,000 more inspectors. Those additional 2,000 inspectors, if they only visited one workplace a day, would conduct 500,000 inspections a year. They would not only be inspectors, they would be teachers spreading knowledge and awareness about better health and safety throughout Ontario.

The effect would, we predict, be dramatic. Workplace accidents and disabilities would decline by much more than 10 per cent, especially if these inspectors had the power to write up charges on the spot against employers who are wilfully negligent. For employers who are simply ignorant of the law, the regulations or safe working procedures, written orders would be sufficient.

Inspectors must be given the time not only to inspect a workplace, but to talk in depth with workers about potential hazards of their jobs. Furthermore, inspectors who speak other languages should be hired so that they can better communicate with workers who do not speak English, because it is often those workers who are most at risk and are not aware of their rights.

Having made this suggestion, however, we really do not think the government has the courage or the will to do something this dramatic. It is simply easier from an administrative point of view to compensate the maimed victims than to prevent their tragedies.

More frequent workplace inspections: If the government is not willing to invest in better occupational health and safety by hiring more

inspectors, it should at the very least allow more frequent inspections of the workplace by the health and safety representatives or committee members.

Bill 208 only requires that the entire workplace be inspected once per year. In very small workplaces, a monthly inspection of part of the shop would be the same as total inspection, but in large workplaces with different environments containing different health and safety problems, a yearly inspection is just not enough.

We do not understand the government's thinking on the frequency of inspection. The inspections themselves cost very little—one worker's wages for the time it takes to conduct the inspection. In a small workplace this would be an hour or two per month. In a larger workplace it would be a proportional cost.

We do not think it is the cost of doing the inspection that concerns the government. It has to be the consequences of the inspection that worry them. More frequent inspections are likely, in many cases, to reveal problems which must be addressed. That is what costs money. But is that not the purpose of inspections, to reveal hazards which might cause injury so that they can be prevented? It is a one-time cost. A hazard that is corrected should not need correcting again. Bill 208 could have been written by employers who are afraid of inspections.

More power to the committees: Another flaw in Bill 208 is that joint occupational health and safety committees are improved only in small ways. We appreciate the fact that many workplaces that are now exempt from committees will have to have them and that larger workplaces will have to have at least four committee members. We also appreciate the fact that committee members will be given at least an hour to prepare for meetings.

None of these changes, however, translates into any more real power for committees. They are still subject to the employers' desire, or lack of desire, to accept their recommendations on how to make the workplace safer. How well funded would the government be if it made recommendations to individuals on how much in taxes they should pay and left it up to them to decide whether they wanted to pay those taxes? Why bother having committees at all if they do not have real power?

True, employers have to respond to committee recommendations within 30 days—far too long—but that is all they have to do, respond. What a toothless law. We suggest that committees have the power to order changes in the workplace that

will improve health and safety conditions. Since most committees are evenly balanced between worker and management representatives, this will not happen very often anyway. When it does, and if the employer disagrees with the order, a ministry inspector would be called in to referee. If the committee is divided on whether or not to order a change, an inspector should make the decision. Such a change would help committee members take their roles more seriously.

We also believe that management members on the committee should be required to come from the workplace, the same as the worker members. There should be no problem meeting this requirement. It is an extremely rare workplace where no management is present, and it would prevent employers from stacking a committee with management personnel who may have a great deal less knowledge about the workplace and its hazards.

We even have problems with the basic right to have true worker representation on our committees. You may find this hard to believe, but one of the largest employers, Domtar in Cornwall, until most recently handpicked the worker members of the joint occupational health and safety committees. Can you imagine their attitudes towards the rest of the law?

The worker members on the committee should also have the right to bring in their own advisers to assist them with complicated problems such as ergonomic design, hazardous materials management, safety equipment and protective clothing. The labour movement has established a great deal of expertise in occupational health and safety matters in recent years. It is wasteful to keep such experts, who are trusted by labour, out of the workplace, where they can make a difference and help prevent injuries.

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Strengthen the right to refuse: The right to refuse unsafe work was a major breakthrough in health and safety legislation in Ontario, and 11 years of experience has proven that workers use that right responsibly, so it seems very odd that the government should restrict that right instead of expanding it.

Bill 208 adds unsafe work activities to the situations in which workers can refuse but it restricts the right to a situation involving imminent danger. This is a backwards step, because we always had the right to refuse unsafe work activities, as decided by the Ontario Labour Relations Board, and that right was not restricted to imminent danger.

Repetitive strain injuries are a major occupational health and safety problem in Canada and the rest of the world. They do not seem serious unless you are the one who is permanently disabled and lives in pain for the rest of your life. Bill 208 seems to be designed to prevent workers from taking defensive measure against working conditions which are designed to wring the maximum possible effort from the human body, regardless of the eventual consequences.

We know this is a problem for employers. Most industrial processes are poorly designed, and it would cost a lot of money and lower production to correct them. We do not think these problems can be solved overnight, but we are not prepared to ignore them completely just because it will be too expensive to correct. You must restore the right of workers to refuse to do work which is likely to cause repetitive strain injury. There is an appeal process available to both parties which can be used to help develop long-term solutions and short-term compromises.

Do not allow refused work to be reassigned before resolution: Further on the issue of work refusals, we believe that the right of employers to assign new workers to refused jobs is wrong. Since workers have demonstrated their responsibility in exercising this right, they have earned the right to protection against negligent employers who will risk another, probably inexperienced, worker just to keep production going. At a minimum, if the health and safety representative agrees with the refusing worker that a job is unsafe and should not be performed by anyone, there should be no one assigned to the job until the situation has been resolved by an inspector.

Do not penalize workers who act in self-defence: Finally, we seriously object to the provision in Bill 208 that workers who refuse unsafe work need only be paid for the first stage of refusal. This makes the right to refuse a farce. It normally only takes a few minutes to complete the first stage of a refusal. It can take hours, even days, for the second stage to be completed, because it requires the attendance of an inspector. A worker who faces the prospect of losing a significant percentage of his weekly income is much less likely to use this right and may consequently endanger himself and other workers. This part of Bill 208 is a serious step backwards, and we demand that you restore the full right of the worker to be protected while legitimately using the right to refuse unsafe work.

Shifting the balance of power will make the workplace safer: In conclusion, we submit that

Bill 208 is bad legislation since it does nothing to tackle the most serious and most expensive public health and safety problems in our society. To a person who knows nothing of the realities of the industrial workplace, it might seem like a good law. To those of us who know better, it is almost worse than nothing, since it will probably be 10 more years before it can be improved.

We strongly urge that you start all over again. This time your starting point should not be, "How can we make workplaces safer and healthier?" but "What powers do workers need to make their workplaces safe and healthy?" A law that is truly based on answers to that question will be a good law which will save lives and make Ontario a better, more civilized place to work.

Thank you once again, for the opportunity to express our views on this very important matter.

The Chair: Thank you. We have a number of members who would like to have an exchange with you and we have about 10 minutes left.

Mr Mackenzie: I have to be very careful how I ask you this, because it is an issue that has got me in trouble a couple of times at these hearings. I want to refer to the first paragraph in your presentation where you say, "We often get the impression that these hearings are just window dressing and that the government has made up its mind about legislation and makes a show of consulting those who will be affected."

On Monday 5 February, the day before we held our hearings in the city of Kitchener—a large group attended those hearings as well—a reporter with the Kitchener-Waterloo Record interviewed Mr Phillips, who just happened to be in town the day before our hearings, the new Minister of Labour, and in that interview Mr Phillips is quoted as saying:

"Giving individual workers the right to shut down unsafe workplaces would undermine the partnership between management and labour, says Ontario Labour minister, Gerry Phillips.

"The Liberal government backed off from the most controversial section of its proposed health and safety legislation because of the damage it could do to labour relations in the province, Phillips said in an interview.

"My biggest concern is that rather than enhancing the partnership, I am afraid we would undermine the partnership," he said." Then he goes on to make a few additional comments that the minister made.

My point is that the bill we are debating here today, even though there have been suggested amendments, is the original bill, not the suggested amendments made by the minister. Yet the

day before our hearings, in the city of Kitchener, he clearly indicated that he has already moved or is moving on the changes to the legislation. Yet certainly we do not have the amendments, or they are not before us, and it is not really what the delegates and the presenters before this committee are speaking to. I am wondering if you have the sense that that really does bring into question the entire integrity of this process and these hearings.

Mr Guenette: Yes, I guess maybe to add to that first paragraph and also to add to how we feel about it, and how maybe I feel about it, the previous speaker had mentioned about government people who are elected and all that. I moved to Kingston, this fair city, a short time ago, and when I moved here it was during an election and, as previously stated, Larry South was one of the first who came to my house to visit, I guess seeing the "For sale" sign and the "Sold" sign he knew I was a new voter.

When I told him my position I was moving into and everything else, he seemed very enthused and asked me a bunch of questions, but I guess he has shown today, like I guess members of the government show many times, that once he hears the word of industry, what labour has to say has no significance, and he leaves. That is the feeling I guess that we are left with.

Mr Mackenzie: One of our frustrations, of course, is that if this is now the official position and not just the printed or suggested position, as is sometimes the government members' defence, we should have it before us and the people making the presentations to this committee also should have the actual copy of the bill before them, because unless he was totally misquoted, the minister has obviously made the change in management's favour in this bill already.

Mr Guenette: We agree.

Mr Carrothers: I do feel after that last answer that I should make a comment on behalf of Mr South. He did say when he came here that he had to leave for a previously set engagement. It is not his doing that the first witnesses up were both from business and that they took one hour to do it. Usually, in fact, this committee has alternated one after the other. I would have to say that I suspect he is one of the few members who has come in when we sat in the local area to sit in on the committee, and I would like to sort of give a different coloration, if I could. He did not just come to listen to one side; he came to listen to the committee. okay?

Now I wanted to ask a couple of questions. The first point may be a minor one, but it is

something that has come up a number of times in a number of presentations and I wanted just to get the response here. On page 8 of your brief, you have mentioned that management members of the committee should be required to come from the workplace. You then go on to mention that perhaps in some workplaces there would not necessarily be a management representative who could be there, so I guess what I am assuming you are saying is that they should come from the workplace if at all possible. Is that what you are saying?

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Mr Guenette: What we are saying is that in many instances the management people come from corporate offices or something of that nature where they have no feel for what is happening in the workplace.

Mr Carrothers: I understand that point. I guess why I am asking this is that when I turn to the bill, as I did when you raised the point, and look at the proposed subsection 8(5c) which deals with the structure of the committees, it says here that the "employer shall select the remaining members of the committee"—that would be those on management—from among persons who exercise managerial functions...and, if possible, who do so at the workplace." "Workplace" is a term defined as meaning the workplace in which the committee is operating.

I think the bill actually does what you are saying. I guess I just wanted to point that out and ask if in fact you felt there could be some stronger wording or something. I think that is pretty clear, that if at all possible, the management representatives on the committee are going to come from the workplace, but it recognizes, as you have done in your presentation, that sometimes there are not management people in that small part of the workplace and they may have to come from somewhere else.

Mr Guenette: The words "if possible" to me mean that it is left up to management to do whatever they want, and if it is the last resort then they have to do it.

Mr Carrothers: The section says "shall" and "if possible," and let me suggest that when those words are interpreted that means it is done unless it is impossible.

Mr Guenette: We do not believe that.

Mrs Marland: I want to come back to page 5 of your brief, because I do not recall in our four weeks of hearings that we have had this point so well emphasized, where you talk about the importance of inspectors speaking other languages.

I must admit to my ignorance. Are you saying that government inspectors are not from a cross-section of language skills, that we actually have government inspectors going into construction and industry sites, and I think particularly of construction because there are a tremendous number of people in construction whose first language would never be English—are you saying that for the majority, government inspectors are only unilingual in English?

Mr Guenette: In construction I do not know because I do not deal with construction, but in the industry there are many cases where there is a problem.

Mrs Marland: I think it is a very valid point that you make. Also, while we are on that subject, we hear time and time again about the number of fish and wildlife inspectors in the province versus inspectors for labour and the workforce. I do not think there is a member of this committee who would not agree that is a pretty disgusting statistic. I think any government of the day, whichever it is, should be able to stand up and say there is a priority for workforce and labour in the province over fish and wildlife.

I would hope, because that figure has been quoted so many times in the last four weeks, that maybe the parliamentary assistant who is mumbling in his beard right now would take that back to the minister and say, "This is the first thing that we should change," because frankly it is indefensible. If it is a fact, it is indefensible for any of us in Ontario today to accept it.

Mr Dietsch: That is a fact.

Mrs Marland: Then I am sure we will see that it does get changed.

The other point, I thought, in your brief that was different was on page 6, where you said you do not think it is the cost of doing the inspection that concerns government; it is the consequences of the inspection that worry them. One of the things I have been saying is that time and time again the examples that labour have been giving us are examples where I think the existing legislation is not being enforced.

When we hear about annual and sometimes longer than annual inspections at plants and locations in the workplace, obviously if we have existing laws that an inspector goes in a workplace once a year or more infrequently than that, obviously it would not matter what legislation we passed. Nobody's interests are going to be protected. I am wondering whether you wanted to enlarge upon that statement that it is the consequences of the inspection that worry them, because you are talking about it worrying

the government in that sentence and I wanted to know what else you wanted to say about that.

Mr Guenette: One point, I guess, is that in saying the inspectors can do a yearly visit to the plants, the numbers show differently. There is no way they can. On the point of the consequences of the inspections themselves, the cost of making an inspection is very little: the worker's wage and that is it. If the power was given to the committee to do more than just make recommendations, there would be some costs there that would have to be looked at, and I guess from there we would be right to assume that the company would be going back to the government, saying, "Health and safety costs too much again."

The Chair: I am sorry. We really are over time. To you and Mr Grant and Mr Wood, we thank you very much for your presentation.

The next presentation is from the Ergonomics Research Group. Mr Bryant, have a seat, please. We look forward to your presentation. We do not know who you are or what you do, but we look forward to hearing that.

ERGONOMICS RESEARCH GROUP

Dr Bryant: Perhaps I should take the opportunity to introduce myself, but first I thank the committee for granting standing to the Ergonomics Research Group. As for myself, my name is Tim Bryant. I have a PhD. I am in mechanical engineering at Queen's University. I am a researcher basically and an academic, so I am afraid that any political rhetoric might be missing from this presentation.

On the other hand, we were planning this particular presentation and I got a fortune cookie that said the object of oration is persuasion, not necessarily scientific matters. So I will try to do a persuasive way of presenting the scientific background that is associated with this.

The essence of it is to define the Ergonomics Research Group and its active areas in this particular research framework, and then to establish a very specific case for a reconsideration of one of the changes that happened in Bill 208; that is, the restriction of what constitutes a hazard to that which proposes an immediate danger.

The group is a collaboration of investigators at Queen's University with a common interest in the development and application of ergonomic principles. We support the spirit of Bill 208, but wish to make a specific proposal supporting the inclusion of chronic occupational injuries in the definition of "danger" and "hazard."

First, the Ergonomics Research Group: What are we? What do we do? Why would we think that it is important to come and present at this particular case? It is a small "g" group meaning that it does not have an official status within the university. We are a group of allied researchers who are representing a viewpoint within the ergonomics research area, but in no way do we represent any views of the university.

We have been active over the past three years and have been really trying to facilitate the interaction between researchers and the basic and applied problems relating to ergonomics. Examples might be a better way to describe what we do.

For example, we have designed ergonomic analysis methods for use in occupational settings. We have assessed workstations in industrial settings, and this is in a number of areas within Toronto and the Kingston area. We developed specialized musculoskeletal research related with low back pain. This not only includes occupational settings, but there are also studies involved with low back pain and pregnancy, so I suppose that is another occupational hazard we could consider as well.

We do the design and implementation of back injury prevention programs and the design and analysis of operator systems for process and vehicle control, and then also get involved with the measurement of noise and vibration in the workplace. We have also developed the fitness standards for the Canadian Armed Forces recently and have done some basic research in the biomechanics of lifting.

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These are all examples of what constitutes ergonomics research areas, because if you go on to the next page of the presentation, the definition of ergonomics is kind of a wooly thing at best. I am sure you have mostly been inundated with the ergonomics this and ergonomics that, and the question comes up, what the heck is an ergonom anyway? There really is not a definition. I suppose that is a traditional academic approach to things, "Let it encompass anything we want."

Usually it is defined as the one that is offered here by the associate committee on occupational applications of ergonomics research, which is a subcommittee of the National Research Council of Canada. It says, "The systematic and practical application of knowledge about the psychological, physical and social attributes of human beings in the design and use of all things which affect a person's working conditions," and this includes "equipment and

machinery, the work environment, the job itself, training and the organization of work."

That is not always a clear definition. I think the examples give it a little bit more of an idea. The idea is to develop a workplace setting that correctly accounts for the physical attributes of an individual in a safe manner. The principles, practice and philosophy contend that systems built within the limitations will promote a healthier and safer workplace.

This brief, though, considers only three very specific things as examples of the musculoskeletal and neuromuscular disorders that could be associated with what are sometimes called chronic occupational illnesses. The definition of chronic and acute injuries—one of the things that alerted us, according to a review of Bill 208, was the fact that in the amendments or in the interpretations that we have received, it is now the consideration that hazard or danger be interpreted as an "immediate" hazard or danger. The case I would like to make is that the chronic, long-term injuries are no less a hazard than the acute ones.

Usually we talk about musculoskeletal or neuromuscular disorders in terms of an acute onset because you can identify what happened and when it happened. There is some reluctance to define a chronic problem, such as joint muscle pain, because you cannot identify a single event, but there is now evidence and we believe sufficient evidence to suggest that there are relationships between specific working conditions and long-term chronic injury.

There are three examples that we are going to talk about: vibration-induced injury, back injuries and repetitive strain injuries. This is by no means all-inclusive and it is by no means exhaustive, but just ways of trying to describe it.

If you turn your attention first to appendix 1, which talks about vibration-induced injury, this is usually associated with the hands, but can also relate to injuries of the back and shoulder and chest. As indicated by a very famous text, the more frequently reported injuries include Raynaud's disease which is associated with power tools. You have some pictures in the back.

Raynaud's disease starts with injuries to the hand, which usually involve numbness and a loss of feeling. This is in a photograph that you have there. If left—this is called white finger—to a significant extent, it becomes dead finger, which looks like that. That is a significant problem that is a chronic one, which is related to vibration-induced damage in the workplace. This in fact is well known and has been discussed under the

current mandate of the Occupational Health and Safety Act, but does illustrate one of the chronic injuries that is associated with this, which would be excluded if one were to interpret hazard or danger simply being an "immediate" hazard or danger.

Back injuries is the second area. It is one of the most frequently reported injuries, comprising up to 30 per cent of all industrial injuries, or maybe even more, depending on how they are reported. Up to 50 per cent prevalence rate is reported in some areas. Just as a fact, in the United States in 1984 the direct and indirect costs associated with back pain were \$16 billion. If we were to take a 10th of that for Canada, it would be \$1.6 billion. If we took a third of that for Ontario, it is \$500 million associated with that particular injury.

Those are both acute and chronic injuries associated with it. If you refer to the appendix, you will see some of the additional information that goes with it. More often, most of the injuries are associated with high frequencies of lifts. So if you have 100 or more lifts then you are more prone to have one of these injuries than if you do less frequent lifts. The more common injuries are associated with repetitive and low-level strains that cause back injuries associated with this particular problem.

Again, this time there are tools that are available for the practitioner to determine what may be considered to be safe lifting limits. We have some questions regarding the exact scientific basis of these, but they are epidemiologically based and used in the United States, called the NIOSH lifting guidelines, and these combine information regarding the magnitude and the frequency of loading and allow one to calculate what would be a reasonably safe lifting condition that would not necessarily or is unlikely to lead to chronic long-term injuries. As an example, we have some of the data here shown in the appendix to let you see some of that information and it is referenced in a classic textbook in this area.

Some of the remedies available for alleviating the situation would include proper training for lifting, but also provision of lifting devices and task redesign.

The last one I want to describe is sort of a catch-all nowadays; it is called repetitive strain injury. It seems to cover a variety of conditions that people have, variously described as cumulative trauma disorder, occupational overuse syndrome, etc. If you use the all-encompassing term repetitive strain injury or RSI to describe this, there are a group of muscle and tendon injuries whose common cause is the continuous repetitive

use of the body in various postures and can be related to posture, the position of an individual or can be related to the actual actions.

The symptoms vary and there are three stages of these symptoms that go with it. In the first stage it is usually an ache or a pain or just nobody really worries about it; it goes back after work or after resting. In the second stage, though, the pain does not disappear and some reduced capacity for work exists. In the third stage even the slightest activities are painful, the person is unable to work and the pain just does not go away. This can be related to the trauma of soft tissues associated with this and some of the theories relating to the causes are known.

Comprehensive review, actually, was done by one of the researchers in Ontario, Richard Wells, and his co-author Ranney, at the recent Human Factors Association of Canada meeting, and I am sure that you will hear from the Human Factors Association of Canada regarding this. He said that the presence of low-level repetitive loading was clearly related to RSI, especially when poor posture and high loads were present. He also indicated that now corrective measures are available that include task redesign to provide rest breaks, workstation redesign to relieve postural problems and product redesign to permit easier handling. RSI is a very difficult issue to try to deal with scientifically, yet even now there are administrative and engineering controls that can be put on to reduce some of those particular aspects of it.

On page 7, I itemized an attempt to consolidate these observations for these three particular occupational injuries, long-term injuries, in terms of what I would consider to be the Occupational Health and Safety Act as I have read it at this point. First, the chronic disorders are as disabling as many acute injuries currently considered imminent hazards in Bill 208. Second, a known relationship exists between workplace conditions and chronic injuries. Third, the risk of chronic injuries can be assessed in many cases, but I will not say all cases. Fourth, corrective measures can be taken in many cases. So those things are tools that are available.

The next case I would like to make is that that is the good news, perhaps. The bad news is there is a need for research and this, I suppose, is the most pressing issue right now. Ergonomics research is simply just not undertaken in Canada to any acceptable level. The problematic aspects of these disorders are also listed and these are common throughout the literature.

First is the aetiology of the problems, what exactly is causing them, how do we exactly trace them, and how do we know that particular changes are going to affect this in the long term? The long-term injuries are very difficult to deal with. Second, we cannot establish prevalence and incidence in selected populations—prevalence, how often, how much it occurs and incidence, how often it is reported—because of our lack of measurement techniques.

We cannot quantify the factors which cause the problems. In part we do not know all the factors that have caused them; some of them we do, some of them we do not. Second, measuring them is extremely difficult. We have not defined safe exposures for all of the chronic problems, and diagnosis and treatment is often a difficult problem as well.

In order to reasonably and scientifically introduce this idea of assessing chronic occupational illnesses into this type of an act, the need for research is imminent. We have to be able to get some of this data in order to say what is safe and what is not safe, what you can do about it and what is reasonable within the workplace.

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This requires an investment of time and money for the solution. Several Scandinavian countries already have institutes specialized in ergonomics problems. Quebec, for example—although it is not another Scandinavian country—has a special fund set up with the equivalent of the Workers' Compensation Board to specifically look at ergonomics problems and this is very active in that particular area. But in Ontario no specific ergonomics research initiatives are available. In fact, our federal granting agencies are very difficult to spring funds from to do ergonomics research because it falls in between the cracks of almost every type of science you try to describe.

In conclusion to this brief, I would like to make four proposals associated with Bill 208, all relating to the same theme.

The first is that chronic occupational injuries be included in the definition of "danger or hazard" as described by the act and specifically as described in subsection 23a(1), and that they be included in the right to refuse work. This is an essential step to improve the health and safety of Ontario workers, which is the stated objective of Bill 208.

The second point is that specific procedures should apply to dangers or hazards relating to chronic occupational injuries that do not require work to be stopped immediately upon discovery of the hazard or danger. I think this is a

reasonable step. This may entail the issuance of an order by the JHSC for workplace modifications with specific time deadlines to be met. But failure to meet such deadlines would permit any certified member to require work to be stopped until the modifications are completed—some sort of a catch clause that would allow reason on either side.

There are two other strange things in here you might consider that I think are also reasonable. It has to be phased in. The expansion of the definition to include chronic workplace injuries I do not think could be implemented the day the act is in force. I think it is reasonable to have a hiatus of three years to allow a transition period to get people used to this, but also to have specific objectives to be met and mainly met by the agency, which is the fourth point: that the agency be given the mandate under clause 10(7)(g), which is the research mandate, to develop appropriate guidelines for the inclusion of chronic occupational injuries as dangers or hazards and to develop an ergonomics research program to address issues associated with these injuries.

In summary, a safe and healthy workplace can only be achieved by the recognition of all forms of illness and injury associated with occupational activity. This brief seeks to broaden the scope of Bill 208 to include chronic occupational injuries as dangers or hazards and provides, I think, a reasonable framework within which this objective may be met.

Mr Callahan: It is very interesting to hear what you are saying: that there may be systemic problems that we are not aware of now that cause or contribute to the injuries of a lot of the statistics we have heard of people being injured or perhaps even killed. Is that what you are saying?

Dr Bryant: Not systemic. I would take "systemic" to mean biologic, something intrinsic in the individual. Undoubtedly systemic factors are mediating or exacerbating, but in general you can relate these to the main factor, which is load. I am a mechanical engineer so I will talk in terms of loading. The type of load that is applied, the frequency of load, the posture the person is in: all relate to the person's biomechanical structure. This is also related to physiology, of course, because blood flow is required in order to maintain muscles, etc, and to prevent fatigue. There is also a biologic response in terms of bone changes, soft tissue changes, etc. All of these things figure into it. There may be some strange systemic factors in specific individuals, but for

the most part it can be identified by the body system responding to an external loading environment.

Mr Callahan: I gather you are involved at Queen's University. How long has this been investigated in Canada? How long has it been going on?

Dr Bryant: The history of ergonomics worldwide would have started in the 1960s and earlier. It is hard to put a date on it. If you take 1905, for example—people were looking at it as the industrial revolution—it started to show a variety of workplace problems. People started to realize that there were certain things you could not do. Formal studies started in Europe in the 1960s. In Canada, my recollection of the earliest real work was in the early 1970s. Funding came along. I would say that in the 1980s we started to really take a look at ergonomics in a scientific manner as opposed to the earlier ad hoc, patch and Band-Aid type of approach.

Mr Mackenzie: I have a reservation, I guess, about one of your recommendations. I found your presentation interesting and I think it is a field that we obviously need to do some more work in. But we have had a number of cases of repetitive strain-type injuries with clerks in grocery stores, the repetitive motions on the checkout counters and in poultry operations where there is an assembly line repetitive operation. There were examples presented to us by the unions in London or Windsor—I think it was London, Ontario—of women who now have literally lost the use of their arms and their ability to hold their kids and so on. I do not know whether some of it is referred to as carpal tunnel syndrome or what—

Dr Bryant: That is an RSI-type injury, yes.

Mr Mackenzie: Yes. What I am concerned with is your third recommendation: that the expansion of the definition for "danger or hazard" be delayed for a period of three years after the act comes into force. I am not sure where there is some knowledge and expertise of the problem already, but that would be very helpful where workers and unions have already identified some real problems: that repetitive strain-type operations and repetitive movements are causing problems and have already led to the beginning of what could be serious problems in the future of these workers. I just have some reservations about bringing in any recommendation that really has a three-year hiatus period when we do have some knowledge, even though it is not an exact science.

Dr Bryant: I take your point and I accept that, as well. What I was wrestling with when we drafted this particular proposal was some form of reasonable introduction. I think that there is an almost universal mindset that we design a task and then we find a person that fits the task. This is really, I think, the crux of where a lot of these types of problems come from. If I take another stab at this, you can almost picture the individual in mind when you look at certain tasks that are defined.

What we want to do is change the whole mindset to the point that you think about the person first and then you design the task. This would be quite a different approach, in fact a revolutionary approach I think, if people were to consider that you consider the individual and then design the task according to the abilities of the individual. This not only extends from the area of particular injuries in the workplace but also physical disabilities, which is another whole issue that goes with it. But I think what is really keeping many individuals out of the workplace is that we do not account for that.

That is a long-winded academic answer. The ideal was to allow a period of consolidation to develop a strategy rather than go at it with a shotgun, and that is really what that hiatus period was meant to be. I would be very happy to be able to identify a short list of things that could be addressed immediately, in a very short period of time, and perhaps phase in implementation in that three-year period that says that in the first year we will identify things that we already know about, implement them after the end of year one, and then allow this philosophy.

Mr Carrothers: Does this group do assessments of people who have been injured, giving suggestions as to what type of work they can do? Does your group do that or is it connected with a group at Queen's that is doing that?

Dr Bryant: We are loosely connected, yes, very loosely connected. There is a new system in the workers' assessment centres which are coming in. There is one that is coming to Kingston.

Mr Carrothers: No, I was thinking of something at Queen's that I used before to get that type of assessment a few years ago. I guess you are not connected with that at all.

Dr Bryant: No. I was just going to say that this is now going to become a consolidated group. We are not officially with it. Our interest started on the research side and we are now moving into the service side. We call ourselves the service-driven model of research. All of a

sudden we realize there are so many needs for this type of work so we are now only getting into that particular area. So we are mainly research and now moving into this other one.

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Mr Carrothers: Okay, let me ask a question on your proposals on page 8, because your first proposal was a suggestion that the definition of "danger or hazard" be included within subsection 23a(1). That is what you said on the paper, but that is the right to stop work. What you said was that that should be included in the right to refuse work, which is subsection 23(3) of the present act. I hesitate to get a little too technical, but I did want to ask why you had not suggested that that definition be included in the right to stop work as compared to the right of an individual to refuse work.

Dr Bryant: I should clarify that. It meant that that should be included in all aspects of the act where a danger or a hazard is described, and if that is an amendment to clarify it, that would be welcome on my part. I wanted to say section 23a to set up what the next part was actually all about: under what conditions stop work could take place. That is really what it meant; it meant the right to refuse work as well.

Mr Carrothers: I see, because the amendments to Bill 208 do include work activity now and that, I would think, would take us into the area and is intended to take us into that area of things that might not pose a physical threat but the action or activity is posing a threat.

Dr Bryant: But the "immediate danger" interpretation of that, I think, is really the one that is the key of this issue.

Mr Carrothers: Agreed. You have mentioned the joint health and safety committees in your second proposal, and I guess I would have thought that was the most useful way to deal with these issues because most of them result from actions that take a while to show their effect. That is the difficulty in recognizing it, I think. The solution is somehow finding changes to the workplace to avoid that action. Those committees or some similar type of collaborative effort would seem the best way to solve the problem. It seems to me that that is the way to handle it and I am wondering if you agree with that and wondered, I guess, why the stop work would also be necessary when that is when you shut the whole process down in a plant. It would seem to me that that is where you do it when something is going to happen imminently. The better way to do it is to have some sort of process to work out

these problems and have it accomplished, obviously, through these committees.

Dr Bryant: I would agree that that is the way it should work. In fact, I have had a couple of very pleasant experiences in working with management and labour toward identifying and solving problems. In fact, the role we are playing is one of facilitator and it works very well when you have co-operation.

My concern is what happens when you do not have co-operation, and we have encountered that as well. There has to be something in place to put a bit of teeth in there to say, "Once the committee has decided on something, then something has to happen," and that is the reason for that particular part of it.

The Chair: Dr Bryant, thank you very much. This committee has heard the word "ergonomics" frequently during our hearings and this is the first time we have had someone really take a very knowledgeable look at it and we appreciate your input.

The final presentation of the morning is from the Communications and Electrical Workers of Canada. Gentlemen, we welcome you to the committee. We are pleased you are here. I think you know the rules. For the next 30 minutes we are in your hands.

COMMUNICATIONS AND ELECTRICAL WORKERS OF CANADA

Mr Dejeet: First I would like to thank you very much for giving us the opportunity, on behalf of the Communications and Electrical Workers of Canada and the Brockville and District Labour Council, to come before you. The gentleman on my left here is a representative from the office of the CEWC. His name is Sean Howes.

Mr Dejeet: This brief is presented on behalf of eight locals of CEWC located in eastern Ontario, which are all part of the CEWC industrial sector. The members of these locals, 510, 520, 523, 525, 526, 538, 542 and 551, are in Brockville, Prescott, Trenton and Smiths Falls. Our employers are well known in the area. Phillips Cables Ltd, BrockTel Ltd—formerly MicroTel Ltd—and RCA are the largest, but smaller employers like Woodings-Railcar Ltd, Guildline Instruments Ltd, Pyrotenax of Canada Ltd, Motor Coils Mfg Ltd and Universal Grinding Wheel are also included. Our locals also make up a significant portion of the 3,500 members of the Brockville and District Labour Council, and as a vice-president of the council I chair the health and safety committee. The labour council shares our

view with respect to Bill 208 and is a party to this presentation.

My name is Aubrey Dejeet. I have been working in industry for 40 years, since I was 15 years old, the last 20 of them at Phillips Cables. During my entire working life I have always believed that safety on the job was as important as the job itself. More recently, through training programs provided by my union, I have come to understand the importance of health and safety and the role the workplace can play in the deterioration of health. I am also a union representative on the health and safety committee at my workplace and an instructor trained by the Ontario Federation of Labour's health and safety centre.

As union representatives we work hard to eliminate the health and safety problems at work, and we are frustrated when we fail. We believed that when the government first introduced Bill 208 there was some hope that we would be given the tools we needed to do a better job of solving those workplace problems. We saw the right to shut down an unsafe job by the certified member as a commitment to better health and safety in our plants. While we were disturbed by the possibility that a management member could immediately restart the job, we thought that that problem would be worked out in the process of passing the law.

We felt shocked and betrayed when the minister proposed amendments that, rather than fixing the problem, made it worse. We believe that if the minister's proposed amendments find their way into the final version of the law, the right to shut down will exist on paper but will not exist in practice. We do not need phoney paper rights; we need rights that are practical and efficient in the workplace. We know the law does not mean anything if it cannot be applied in the everyday conditions we face in the workplace.

We know that employers around the province ran a campaign to scare the government into thinking that we, Ontario's workers, would go crazy if we were given this new power, but that simply is not true. We know that we are an important reason for the economic health of our industries; we sometimes think our employers forget that fact. We also know that our jobs depend on the health of those industries and the economy in general. In our workplaces the right to refuse has been used, but it has never been used frivolously. Our employers have never charged us with the abuse of this right.

Just as an example from one workplace, at Phillips Cables where I work, there have only

been about a half dozen refusals to work in the past 10 years. There have been lots of situations where a refusal perhaps could, even should, have been exercised and was not. Indeed, when we investigate accidents and we ask our members if they had known a problem existed with the job, too often they tell us they did. When we then ask why they did not refuse to do the job, they usually answer that they just wanted to get the job done. From our perspective, that shows a workforce that rather than abusing a right, underuses it. It also shows us that the training that has been given with respect to health and safety has not been good enough.

In one of these situations I noticed a problem, the presence of a broken guard on a machine. I pointed it out to the worker who was doing the job and reminded him that he could refuse to do the job if he thought it was dangerous. He spoke to management about the problem, and it, management, came to believe that I had told him to refuse to do the job. Management did not have any concern about dealing with the problem; it recognized the hazard, but argued with me about what I had or had not told this worker. More important, he continued to do the job while no proper guards were in place. Luckily he was not injured. At the beginning of the next shift another, more experienced, worker was assigned to do the job. He also noticed the hazard and the problem was fixed before work began.

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Had the right to shut down been present at that time, both the employer and myself could have avoided a lot of aggravation and dealt with the real problem more quickly than we did. Most importantly, we would have eliminated a potential cause of injury for the worker as well as eliminating a violation of the law. We were not smart in that situation, we were lucky.

The health and safety committee members in our locals are, frankly, insulted by the unfounded charge that we abuse our rights and cannot be trusted with expanded rights. Today in this province every employer has not only the right but the obligation to shut down unsafe jobs so as to protect his or her employees. Some do but too many do not. The case I just described is an example of that. Some of our employers have been charged and found guilty of violations of the current health and safety legislation. We ask you, who is abusing their rights? Who is acting in a frivolous manner? We do not think that an honest individual would respond, "the workers."

In this regard, we do not believe that it is fair that every worker affected by a refusal or a

government inspector's order is not guaranteed payment of wages and benefits. A worker who chooses to refuse to do a job is doing so in order to protect himself or herself from harm. It is not an easy decision. We have been trained that refusing the direction of a supervisor is insubordination and usually results in discipline. The traditional rule on the job is, if we have a problem, work now and grieve later.

When we do refuse to work we are resolving a conflict between two tendencies, getting the job done and self-preservation. If that refusal creates a situation where a group of co-workers cannot continue their work because of the refusal, whose fault is that? If the individual worker is supposed to be protected from economic loss, that must be because the government wanted people to be able to use the right without fear of penalty. But if, in using the right to protect myself, I create economic hardship for my friends, what kind of situation does that place me in? Not a very pleasant one, I can assure you. No worker should have to consider who gets paid and who does not if he or she refuses an unsafe or unhealthy job. It creates a situation where a worker balances a potential threat to his or her health and safety against a certain economic penalty on co-workers. It should not happen. All workers affected by a refusal or an inspector's orders must be protected from penalty and if the right to shut down is enacted, workers affected by this action must also be included within that protection.

Another part of Bill 208 that we do not find strong enough is the section that would allow an employer 30 days to respond to a recommendation from a health and safety committee. This is simply too long. In most situations the employer can and should respond more quickly. Again, at Phillips, we have a procedure of a monthly audit of the workplace 10 days before our health and safety committee meeting. During our audit we review the situation in the plant and we make recommendations to the employer on how to deal with all the hazardous situations we find. The employer has agreed to answer those recommendations within seven days and no later than three days before the meeting so that we have time to consider the answer before the committee meets. We have done this because both sides agreed on the need to have a quick response on items affecting health and safety. Many of the situations are dealt with immediately. A week is a reasonable time frame for the more complex issues, 30 days is not.

We are concerned that the 30-day time limit will slow down the process of solving health and

safety problems in our workplaces, and we urge you to amend that section to ensure that a response will be made within seven days.

We are also concerned that the change in wording in Bill 208 may have a negative impact on our monthly inspections. The new law would allow inspections of at least part of the workplace on a monthly basis and would require that the full workplace be inspected in a 12-month period.

Our regular monthly inspections are an invaluable tool for identifying problems. This is the first step in getting them resolved. We simply do not understand why the government should take this step backwards, taking away a right that we already have and use to great benefit. We urge you to ensure that a monthly inspection of the whole workplace is done.

On average, I spend between 12 and 16 hours each week, paid by the employer, doing health and safety work on behalf of the committee. Our full committee has an hour of preparation time before every meeting. All of that is done because we recognize that it is necessary for the union side to be prepared if the committee is going to be effective in resolving health and safety problems. We think that the inclusion in the law of a minimum of one hour paid time to prepare is an absolute minimum. We do not believe that we should have to use our own time or funds from union dues so that we can take part in the famous internal responsibility system.

We would also like the opportunity to bring our health and safety advisers into the workplace guaranteed in the law. We do not have a serious problem with this ourselves because most of our collective agreements allow union representatives reasonable access to the workplace. So far that has never been refused, but we have seen situations where the employer will bring in an expert from some consulting firm or from his head office and the workers involved simply do not have the technical background to even ask all the right questions, let alone analyse and evaluate what they were being told. Workers should not have to beg to get the assistance they need.

There is a final point I want to make. Our locals fully support the brief presented in Ottawa by our national President, Fred Pomeroy, and those presented on behalf of all workers in the province by the Ontario Federation of Labour. We are a relatively small group and we do not have the same level of experience in interpreting laws as some of our full-time staff have. We do, however, know that if we are going to be able to do our jobs as members of health and safety committees in our individual workplaces, we

need some help from the legislation. We urge you to include the proposed amendments from labour in the final draft of this bill so that we will be able to play a full role in resolving the health and safety problems we face.

We really do not have any axe to grind. While many of the problems we have to deal with seem complex on first view, they are really very simple. If the hazard in the workplace is not removed, or if the worker is not protected from it, somebody ends up hurt or, even worse, he ends up dead. That somebody could be me, it could be a co-worker, a friend or even one of our kids. We all have wives or husbands, children, mothers, fathers, friends and families that share the suffering.

We know that the personal cost of an injury on the job can never be measured in purely economic terms, but even in those terms alone, the costs are great. It does not need to happen. With better tools, we can make it happen less. We hope that you will make the changes in the law that will make that happen.

Mr Mackenzie: I want to congratulate you on an excellent brief presented with some feeling and I tell you that it is equally as good as another excellent brief we had from your president, Mr Pomeroy, and Mr Cwitco in Ottawa yesterday.

We seem to have a Minister of Labour in this province that has more positions than Masters and Johnson. This is today's Whig-Standard with a big picture of the minister and there are the infamous quotes that we are now getting. The writer or reporter is Angela Mangiacasale. I presume she is accurate. The reporter on the Kitchener article was questioned as to whether or not he had got the right statement down. Let me read you this and see what your reaction is to it.

"Provincial labour minister Gerry Phillips says he has not yet decided whether Ontario workers need the right to shut down their plants to protect their lives and health.

"But he sounds like he's made up his mind.

"In discussing proposed changes to the provincial health and safety law with the Whig-Standard, Mr Phillips said he believes the most effective safety occurs in a workplace where both

employer and employees share equal responsibility for it." We agree with that. "'Workers can legally refuse to do work that is unsafe, so also giving them the right to shut down a plant would create an imbalance' he said in a telephone interview from his car between appointments early last night.

"'Instead of both parties working to resolve [a problem], you've got one party that takes unilateral action,' the minister said.

"That kind of statement angers labour leaders such as Kingston's Gary Wilson.

"'Companies already have unilateral power [to shut down their plants],' said Mr Wilson, president of the Kingston and District Labour Council."

I have no idea just exactly where this minister is going. There is not a day now, it seems, that we do not get statements from this minister that contradict each other. I do not know about you, but I would like to know what we are actually discussing before this committee.

Mr Dejeet: All we are asking for is the same right that the company has. They have the right to shut it down now and we want that right. We do not abuse the right to refuse. There has not been one worker in Ontario that I know of who has been charged for abusing the right to refuse. I do not know of any worker. We do not abuse it.

Mr Mackenzie: I think it is time that the minister got his act together. Unfortunately, I am not sure that it is just the minister. I think he is taking his directions directly from the Premier of this province.

The Chair: Mr Dejeet and Mr Howes, we thank you very much for coming before the committee this morning and for a very excellent brief.

That is the final presentation of the morning. As I understand it, we have just had a cancellation of the 1:30 appointment. Does the committee wish to come back at two or do you wish us to try to move the others up to 1:30? Fine. We are adjourned until 1:30.

The committee recessed at 1203.

AFTERNOON SITTING

The committee resumed at 1334.

The Chair: The standing committee on resources development will come to order. We have an afternoon of presentations on Bill 208.

Mr Wildman: Mr Chairman, I would like to move a motion.

The Chair: Mr Wildman moves, seconded by Mr Mackenzie, that in view of the conflicting and confusing statements by the Minister of Labour about his intentions regarding amendments to Bill 208, particularly relating to the extension of the right to shut down unsafe workplaces by certified worker inspectors, the standing committee on resources development invite the Honourable Gerry Phillips to appear before the committee in Toronto this week to clarify the exact amendments the Liberal government intends to make to Bill 208.

You now can speak to that motion. I would just encourage members, if we can have an agreement, that we have one speaker for each party on the amendments so we do not cut into the time of people making presentations on Bill 208 this afternoon. Is that an agreement among members?

Mr Dietsch: Could I have a copy of the motion?

Mr Wildman: I have given the motion in writing to the clerk.

The Chair: Is that an agreement among members that we have one speaker from each caucus? Agreed. Thank you very much. Mr Wildman, briefly.

Mr Wildman: Yes, I will be brief. We, as a committee, have been faced with the situation of travelling around the province holding hearings on Bill 208, knowing as a result of the statement by the minister in the House in October that there would be significant amendments placed by the government during the clause-by-clause discussion of the bill.

As you know, we have requested that those amendments be tabled before the committee so that not only the committee members but those people making presentations from labour and business and other interested groups would know what exactly the government intends the bill to look like and what the impact of the bill would be so that they could comment on it.

We have not received those amendments, but what has happened as we have travelled throughout the province is we have had a couple of press

reports of interviews with the Honourable Gerry Phillips in which he has made, as I have indicated, conflicting statements about the government's intentions.

When the committee was in Kitchener, we had the statements quoted in the Kitchener-Waterloo Record which indicated that the government would not extend the right to shut down to certified worker members because it would cause an imbalance. We expressed a concern over how that was subverting the process of the committee and the legislative process and in fact was insulting to the members of this committee and to the members of the public who were making presentations.

Now we have a statement quoted in the Kingston Whig-Standard of today to the effect that the minister has not made up his mind about whether or not the right to shut down unsafe and hazardous work should be extended to certified workers.

This really is confusing, and I think it would only be fair to the committee and to the members of the public, and frankly to the minister, to give him the opportunity to appear before the committee to make clear exactly what his amendments will say, what they will mean for the import of Bill 208 and what the results of those amendments might be in terms of power in the workplace over occupational health and safety issues.

I am not tying it to a certain date. I understand the minister's schedule is busy. I think he was quoted in the paper on a car phone between appointments. I realize that he is a very busy man, but I hope that he will come before the committee some time this week while we are in Toronto so that this whole process is not just a farce and we actually know what the government intends to do.

Then we, as a committee, will be able to ask the proper questions and members of the public will be able to make their views known on the bill as it will actually be presented to the Legislature when this committee is finished.

Mr Dietsch: I can recognize the concern of the member as far as the articles in the press are concerned, but it appears that there is some difficulty in understanding what the mandate of the committee has been. The minister was quite clear during his early presentations to the committee in the House—and I happen to have a copy of the Hansard here.

The minister has indicated that he wanted to have full consultations with groups, as we have been having across this province, as we are scheduled to have for the rest of this week and for the best part of next week, and that they would in fact have an opportunity for input and consideration of that input into the process, which has been the case.

I know that there has been some viewpoint that that input would not be taken seriously, and nothing could be further from the truth, quite frankly. This committee—I am sure on both sides—is quite serious about the kinds of presentations. We heard a very much different presentation this morning, which made some very valid comments. The ergonomic presentation that was before us certainly added considerably to the process.

In the Whig-Standard yesterday, as the minister was quoted, he specifically said he has not yet decided. I think it is important that we do not usurp what we are trying to do with this kind of committee process, and in fact the process is an important one. I think it speaks well of the kind of open response that the general public at large has had an opportunity for input into important legislation.

1340

I know there have been a number of people before us who have outlined their concerns with health and safety, and I would be remiss if I said that—health and safety is not a partisan issue. Health and safety is a concern for all of us, from those individuals who have different experiences with the workplace setting, like myself, to those like Mr Wiseman who has operated and run a small business.

I think it is important that that cross-section be understood when we are trying to develop legislation that encompasses the whole of this province and the many varied businesses that are out there. I think it is important that we hear from those sectors, and this has been a full committee process of hearing.

The minister will be before this committee next week. I believe it is Wednesday he is scheduled to be before the committee when the amendments will be laid on the table, and I am sure that the minister has outlined very seriously the concerns and approaches that are being had.

You know and I know that people from the Ministry of Labour as well as the members have been monitoring carefully what has been said. There are still a number of briefs to go through, and I for one am interested in hearing what those briefs have to say. Each and every day we have

new points that are made, important points that are made, and I think it is important to relate that the committee process be conducted in the fashion that we have been used to carrying it out.

For that reason, I am not going to support the motion. The minister is going to be here next week when we start our clause-by-clause laying all the amendments on the table, and I think that that process is an important one which we should all follow.

Mr Wiseman: I will support the motion because in my almost 19 years of being a member, I have never known a case where the minister, when a committee was out hearing briefs like we are hearing here now, made statements to the press the day or the day before or whatever, when we are making our presentations. I do not think that has ever been the case, to my knowledge.

The other thing is, I felt on Bill 162 and I feel on this Bill 208 that had we known the minister's latest views on what might take place—I realize we have a new minister over the one that introduced the bill in the first place, but there have been some statements about certain amendments that he, I guess, has already considered making. We should have known those at the beginning of our hearings and we did not. We did not on Bill 162 either.

I think it is unfair to the committee and unfair to the people making the presentations if we are talking the old bill and if the minister, whether he is right or wrong, or the press are quoting him right or wrong out there whenever they have written these articles in Kitchener-Waterloo and now in the Kingston Whig-Standard—there must be some truth to that. All the people who have taken the time over the presentations that we have heard and ourselves, if we are flogging a dead horse, if the amendments are coming in or he knows what he is going to do, then I think he should come before us and tell us.

We still have some meetings in Toronto the balance of this week and we still have some next week in the north. In my opinion, it would give the people who are making presentations a chance to speak to what the minister has in mind. As Mike Dietsch said, we are open, the minister and the ministry are open and the government, to suggestions, because we have heard many good ones out there that might be over and above what the minister is proposing in his amendments that we hear in the press or we hear him quoted as saying in different areas.

Having been a minister one time myself, and I am sure Jack Riddell would vouch for this,

sometimes you say something to the press and it is altogether different when you read it. We realize that, and that is why I feel we should not take as gospel what we read as being exactly what the minister said. So if we get him in, we hear what he said, what he thought he said and was maybe quoted differently, I think then, for the balance of our hearings and for the time when we are doing clause-by-clause, it will certainly help us to carry out our job and do what I think we should do.

I would just ask the members of the government to really think this out and not be whipped into a vote that might be embarrassing for them later on, because I know most of them personally and they would not want that to happen.

The Chair: Thank you, Mr Wiseman. I appreciate the fact that members spoke so briefly and agreed to one speaker for each caucus, in view of the fact that we want to hear from the delegation.

Mr Wildman: Could I just close out as mover of the motion?

The Chair: No. That would open it up again to another round from each caucus.

Mr Wildman: No, I want to close out debate.

The Chair: We agreed to one speaker from each caucus. To be fair, Mr Wildman, that would be opening it up to two speakers from each caucus. If the committee agrees to do that, that is fine.

Mr Wildman: That is fine. I do not want to prolong debate. I just want to point out that the minister is not going to be here before the hearings are over.

The Chair: I am sorry. We agreed to one speaker for each caucus. Is the committee ready for the question?

Mr Mackenzie: Can we have a recorded vote?

The Chair: Yes, we can have a recorded vote.

Mr Wiseman: Could I have a minute to get my colleague?

The Chair: No.

The committee divided on Mr Wildman's motion, which was negatived on the following vote:

Ayes

Mackenzie, Wildman, Wiseman.

Nays

Callahan, Carrothers, Dietsch, Fleet, Lipsett, Riddell.

Ayes 3; nays 6.

The Chair: Can we move to the first presentation of the afternoon? That is from the Peterborough Labour Council. I understand that they have agreed to share their time with the Ontario Public Service Employees Union.

Lady and gentlemen, we welcome you to the committee this afternoon and we look forward to your presentation. I understand that the labour council is going to make its presentation first, to be followed by OPSEU. If you will introduce yourselves, we can proceed.

PETERBOROUGH LABOUR COUNCIL

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 453

Mr Ball: Good afternoon, ladies and gentlemen, sisters and brothers. I will apologize in advance for what may seem like a long introduction of myself. It does have a purpose. My history in the labour movement and health and safety is not the exception, but rather the norm. Collectively, we bring hundreds of years of experience, skill and dedication to this gathering. That may help you in small part to understand the frustrations we feel with the Ontario legislation which, at its best, renders a very poor solution to very critical problems.

My name is John Ball. I work for General Electric Canada, Peterborough plant. I began work there as a fitter-welder in 1963. My union is the United Electrical Workers, Local 524, and I am an executive officer, chief steward in large motor and generator. I have held various union offices over the last 25 years, including 10 years as a health and safety committee member.

Today I am here as a representative of Peterborough Labour Council, of which I am also an executive officer, and in which I fill the dual roles of education chairman and health and safety representative. I hold a certificate in labour studies from Sir Sandford Fleming College and since 1977 have been an instructor with the Canadian Labour Congress in labour studies, and also an instructor, level 1 and level 2, with the Ontario Federation of Labour, now the Workers' Health and Safety Centre.

This is actually the second brief I had prepared for this day. The first one was simply a rundown of the different segments of the proposed act which were not acceptable in one way or another to myself and to those I represent. But because of the series of events, both personal and affecting those close around me over the last few weeks, I decided to change my presentation and hopefully give you an idea of the frustration, the anger and

the sorrow that often come with the job of health and safety activist in our workplaces in Ontario.

1350

I will speak in the first person, since these particular events revolved around my immediate area, but believe me, these occurrences are all too common to many of us. Perhaps the saddest part of it all is that this new legislation you are proposing will do little to correct the problems of the realities of life and death in our workplaces.

Bill 208: I am sure by now you have heard many dissertations on the proposed revisions to the present health and safety act. Without going into details on the different sections I feel fall far below the needs of Ontario workers, I will say this. The Occupational Health and Safety Act, 1979, was a marked improvement over its predecessor, yet in my considerable experience I have found that the protection purported to be there was in fact, in too many cases, either not enforced or unenforceable. To some, I suppose, equating our workplace with a war zone seems a bit extreme, yet across Ontario the real-life scenario is too often one of many battles fought, workers killed, wounded or sickened unto death by noxious chemicals. So, in effect, we have chemical and biological warfare in the workplace.

Of course this is not intentional, but then we also do not have the rules of the Geneva Convention, either, to restrict the broad use of chemicals and biological agents. I have been, over the years, accused of blowing things out of proportion. I ask you, has it not always been an accepted ploy to attempt to discredit when the heat is becoming a bit too much for comfort? And the heat is on and is maintained by many like myself.

Over the years I have watched my fellow workers become sick, leave work and all too often die, long before their time. I have files, including doctors' reports and death certificates, such as this one right here in my hand, indicating cause of death that points very clearly to probable workplace origin.

Blowing things out of proportion? No, I think, if anything, perhaps the problem is understated. Even I, as aware as I am of the risk, have sometimes given in to production pressures and gone ahead when in fact I should have flatly refused to work. Presently I am helping a fellow worker on his claim for compensation for a medical condition his doctor feels is work-related. This particular doctor works at the Ontario health clinic for the Ontario Federation of Labour. This worker and a co-worker of his of some 20 years

have worked with epoxies and related chemicals throughout that period. Last week his co-worker died of cancer at approximately age 39. That man's doctor, the deceased person's, is supposed to have written a document stating that in her opinion the probable instigator of the cancer was a workplace chemical.

I tried for weeks to contact the deceased through his two sisters who were caring for him. I found that as his condition worsened and as he went through chemotherapy, radiation treatment, etc, he became a virtual recluse, not wanting anyone to see him, not even his best friends. A few minutes after my last attempt to reach him by telephone, I was walking down the street and he passed me in a car driven by one of his sisters. He looked out at me with the saddest expression I have ever seen in the eyes of a human being. His hair was gone and his face a grim caricature of the person I had last seen. Now, I am a person who can get very concerned over seeing a dumb animal in distress. I can tell you, I will never forget those two seconds of human contact as long as I live. I did not try to contact him or his family again.

The other fellow, his co-worker, has symptoms that are typical of several deceased persons I have investigated over the years, all having been involved with epoxies in varying ways. Yet another man who came to me last Wednesday has now had four operations for skin cancers. He is an armature winder and has worked with epoxies for 30 years approximately. His brother has been my barber for years. I have worked with the cancer patient off and on for over 25 years. So when I am accused of blowing things out of proportion, sometimes my response is: "Buddy, maybe you would like to come with me and read through some of my files, and the next time I go out to visit a dying co-worker and his wife and children you might want to come along. Then you tell me if I blow things out of proportion. If that is not convincing enough, then start going through some of the asinine legislation that is supposed to protect us from these risks in the workplace."

I have even gone so far as to show a few of these people who try to discredit a copy of a Backgrounder issue from an Ontario Ministry of Labour publication relating to the government's endeavours in documenting health effects. I think the next two paragraphs quoted from the paper very neatly sum up the collective mentality of some of our legislators.

"The 'health effects' documents on involuntary exposure to tobacco smoke provided the

basis for legislating worker exposure products"; then, the very next paragraph, "The health effects documents on welding and cutting fumes, wood dust and epoxy resins provided a basis for reviewing the exposure limits for these substances."

I am a welder. Last week I literally filled an 800-foot-long building with choking, acrid fumes from burning epoxy paint and other residue. That sent several people to surgery in severe distress. Yesterday the Ministry of Labour investigated the area and the residual paint dust I had accidentally burnt. The decision: no problem. The company did nothing wrong in leaving a layer of epoxy paint dust over a 50-foot square of pit area open to worker contamination.

I went down in that pit four weeks ago to take some measurements to cover a section left open by equipment removal. During a 20-minute exposure, during which I did not do any welding, I picked up enough of that "totally safe, nontoxic material" to leave me in agony for three weeks. I am, incidentally, still under doctor's care for that. Of course, I tend to blow things out of proportion.

The plant nurse, on seeing my skin condition, remarked: "My God, I have never seen anything like that. You look like you have blood poisoning." Well, the tests showed nothing except that I took an allergic reaction to some very powerful agent, but I can tell you, I was genuinely concerned about the possibility of gangrene in my legs for several days. But once again, I do tend to exaggerate, so they say.

The thing that really blows my mind is this. If I had been smoking one cigarette in that same area, I could have been charged and fined and possibly the whole 50-acre plant subsequently could have been designated as a smoke-free area. Where in the name of heaven are these stringent rules and regulations when it comes to all the other dirty crap we have to work with on our jobs?

As I write this, I know I will be under heavy attack by management, by the Ministry of Labour and even by some of my co-workers who have taken up the management's cry of, "Good God, Ball is at it again." I have three years and some to my earliest retirement date. I fully expect I will still be fighting for a compensation claim on my recent exposure injury and quite possibly still fighting to get that deadly mixture of epoxy paint dust, isocyanate residue, lead paint residue, carboline paint residue, fibreglass dust from sanding and who knows what else in that pit.

I have been fighting long and hard for over 15 years now on health and safety, yes, even before

the present act was in place. I have earned my reputation and I am damn proud of it. I know my stuff. I read medical books and chemical journals like some people read western novels and I understand most of what I read.

I know I am considered a formidable opponent when I take on the Ministry of Labour, management, company physicians and yes, sometimes even some union officials who feel I tend to rock the boat too much. However, I am here to ask of you whether in fact you are sincere in what you claim you want to do, namely, to reduce the carnage in our workplace. Then give us the legislation and tools we need to help ourselves and then give them some teeth and give the inspectors some backing when they try to use those teeth to correct some of these problems.

Bill 208 is hardly what we were hoping for to ease our plight in the workplace. Please do not water it down even more. I thank you.

1400

Mr Oliver: My name is Mike Oliver. I am a correctional officer at the Cornwall Jail, and I am the steward of the Ontario Public Service Employees Union, Local 453. To my right is Janet Kerr. She is a research education officer with my union. To the far right is Bob Patrick, an executive board member of my union. I wish to thank my brother from the Peterborough Labour Council for unselfishly sharing this important time with us now.

I am not here today to praise our health and safety laws but to improve them, and let me tell you, they need improvement. I wish I had time to tell you about all the dangers we face in the places we work. There is a very long list of hazards and unsafe working conditions that cause thousands of injuries, lost-time sickness and long-term disability among my fellow members. Believe me, in our job, stress and working conditions are killing us long before our time. I can tell you only that the occupational health and safety laws in this province do not protect us.

You may find it hard to believe that Ontario's occupational health and safety laws, which have been called by some people models for the whole world, are in fact inadequate and even quite harmful. Let me tell you what I am talking about.

Correctional service workers and health care workers in Ontario's institutions face some alarming hazards. We have had members killed by violent patients. Many more have been injured in patients' assaults. Some of our members have contracted infectious diseases. One just died at Lakehead Psychiatric Hospital

after contracting hepatitis after being bitten by a patient.

We have had members develop asbestos-related lung disease and cancer from exposure to asbestos at our institutions. We have just found out about this at the Whitby Psychiatric Hospital. Two workers there developed cancer of the lung from exposure to asbestos. One of them died. The other has just had part of his lung removed.

Correctional service workers face very similar threats to their health in the province's jails. One has only to pick up a newspaper to see what kinds of inmates we are facing in today's society-violent. Our jails are very overcrowded. Conditions are very explosive. The inmates are lashing out at us. Assaults and injuries from inmate altercations are rising steadily. We have difficulty having very common hazards addressed, such as exposure to chemicals and asbestos.

Office workers do not fare much better. They are being plagued by serious repetitive strain injuries and indoor air pollution problems. They are also having difficulty getting their employers to deal with these concerns. Most office workers do not even have a joint committee to raise these matters. What is needed now is change in the legislation. Specifically, clauses 8(1)(a) and (b) of the act must be repealed so that all workers have the right to a joint committee. Joint committees should be made more effective by providing worker members of the committee the power to issue provisional improvement notices.

I mentioned repetitive strain syndrome a moment ago. OHIP key punch operators are especially susceptible to severe neck, shoulder and arm pains caused by intense, continuous keyboard work, poorly designed equipment, high quotas and infrequent work breaks. Some members are now on long-term disability because they did not have the right to refuse to do the work that was injuring them permanently. This condition can be prevented. The safety law should protect workers who are injured as a result of poor working conditions, but it does not.

We looked into Bill 208 to help us, but sadly, Bill 208 will not stop this situation from happening again. It will not give us the right to refuse activity that causes chronic health problems. Here is how the situation can be improved. Subsection 23(3) of the act must be amended to provide workers with the right to refuse where activities they perform are likely to cause long-term and short-term acute injuries or illnesses. Bill 208 will not give us more effective joint committees to resolve our health and safety

problems. Bill 208 will not enable inspectors to assist us any better than they did before.

The right to refuse dangerous work: The bill does not remove the restrictions on the right to refuse imposed on health care personnel, nor does it repeal the exclusion of firefighters, police and correctional employees. It is clear that these restrictions are not justified from a public safety point of view. The only result of these restrictions has been to prevent serious workplace hazards from being resolved promptly.

Subsections 23(1) and 23(2) must be repealed. The bill does not prohibit employers from reassigning refused work to other workers before the safety issue is resolved. That unpleasant and foolhardy feature puts other workers in jeopardy. Subsection 23(11) must be repealed and amended to prohibit such reassignments.

Bill 208 does not expand the application of the refusal provision to work activities that can cause disabling chronic injuries like those which affect OHIP key punch operators. Subsection 23(3) must be amended.

When it comes to workers being paid during a work refusal, Bill 208 takes us backward. Under Bill 208 workers are paid only during the employer's investigation into the refusal, but not if they continue to refuse and call in an inspector for an independent evaluation. That amounts to holding people for ransom. In effect, it takes away the right to refuse dangerous work.

The section on 100 per cent payment must be deleted and subsection 23(10) of the act amended to guarantee payment at all stages of the refusal.

Joint health and safety committees: Joint committees will not be made more effective if employers are given 30 days to respond to joint committee recommendations. Thirty days is much too long, especially if the reply from the employer turns out to be negative. We strongly recommend that management be given seven days to respond to joint committee recommendations. Nor will training without the power to act on the knowledge improve the resolution of contentious issues.

Worker committee members need some levers that encourage employers to be proactive. Providing workers with the power to issue provisional improvement notices is one such mechanism. Section 8 must be amended to enable worker members of the committee to issue provisional improvement notices.

The power to shut down unsafe work is another key issue, but Bill 208 provides this power only symbolically. This section of Bill 208 must be changed to allow a certified member

the right to shut down work where he has reason to believe the work is unsafe. In doing so he must not be subject to disciplinary action.

Legal enforcement: Bill 208 does little to address the whole problem of enforcement. Inspectors are not provided with more effective enforcement powers and sanctions. Raising the maximum fine to \$500,000 for a conviction under the act, when convictions and prosecutions are already hard to come by and the average fine is a little over \$2,000, really misses the point. Section 29 of the act must be amended to oblige inspectors to issue orders and sanctions whenever a violation of the act occurs. Further amendments must provide inspectors with the power to issue immediate civil penalties in the form of fines whenever a violation occurs.

In the past two days I have heard business groups say how the committee formula is a good idea. But please exempt them, as they see profits at risk. We all know what comes first: profits or workers' lives. None of you would willingly go to work knowing there was a good chance you would become ill or maimed on the job. Astounding as it may seem, that is exactly the situation many of my fellow members face each day. What is worse, they have absolutely no self-protection under the Occupational Health and Safety Act, nor any effective remedy under Bill 208.

1410

For this reason, we appeal to you to make the recommendations we suggest. Guarantee the right to joint health and safety committees. Give the employer no more than seven days to respond to committee recommendations. Enshrine an unrestricted right to refuse unsafe work. Do not allow refused work to be assigned to other workers. Expand the definition of hazardous work to include that which causes chronic disability. Make sure that the certified workers can impose a work stoppage and issue temporary work orders without recrimination. Insist the ministry inspectors be called in when there are workers' concerns to be investigated. Ensure that workers are paid for the entire duration of a work refusal. Give the inspectors some muscle by empowering them to impose immediate work orders and sanctions.

If these improvements are made to Bill 208 and to the Occupational Health and Safety Act, then I and my fellow public service workers will have some genuine protection. If working conditions are safe and healthy, we will be able to work better and last longer. Surely that is one goal we can all aspire to.

Mr Callahan: Mr Ball, you are a rare breed and I applaud you. If in fact the facts were—and I have no reason to doubt them—as stated by you on page 3 of your brief, and the decision of the Ministry of Labour was what its decision was, then keep fighting it, because if that is the decision it came to on those facts, then there is something wrong.

However, having said that, I think some of the problems that exist obviously in a concern that I think all members of the Legislature are concerned about is ensuring that workers are protected and are compensated through the Workers' Compensation Board should they become ill. I think if there is one common bond that runs through this entire Legislature, it is that we want to see the Workers' Compensation Act work well. We would like to initially eliminate any need to go to the Workers' Compensation Board and do that by making safe workplaces, but sometimes these things are, I suppose, still being investigated.

I am fighting for a constituent in my community who is suffering from aluminosis and we have yet to be able to get the scientific people to be able to say how it happens and what the effects of it are and so on. Those are the things that still have to be looked at and have to be investigated.

But I applaud you. You obviously are not prepared to back down on taking on anybody. I would hope that there are many like you out there who are doing the same thing because I think that is the most significant way of protecting workers in the workplace. I am a member of the government, by the way, so I want you to realize that I cannot speak for all of them but I think, knowing most of them, I would say that they all put the question of human concerns ahead of even their political aspirations.

Finally, we heard from a fellow today who used a word I had never heard before—"ergonomics." I did not know what ergonomics were at all. In fact, if I had had a dictionary, I would have looked it up. But I think what he was telling us was that there are in fact situations in the workplace that have to be investigated in terms of how people do particular jobs and what impact that has on injuries that we probably never heard of 20 years ago.

I think with reference to the OHIP workers you referred to in your brief, it was interesting and important in these hearings to hear from people such as yourselves but also from the fellow from ergonomics at Queen's University, because what we are doing here as members, in going around on the hearings, we are listening to information

from people we might not know about, and that gives us a better understanding in terms of perhaps the causes of some of these problems so that better legislation can be enacted.

Finally, the perception I get, and I am just a visitor on this committee, I am not a regular member, but I think that as I listen to the hearings and I listen to sort of this confrontation between the paranoia, and I say this with respect, of both labour and management, management looks at labour and says, "They are bad and they are going to do things that are not realistic," and so on. Then on the other side of the coin, labour looks at management and says it is going to do the same thing. I think what we as legislators try to do is to try to create a bill; it is not cast in stone.

The Chair: I am sorry to interrupt. I really am, but we are really running out of time and I wonder if you would give them an opportunity to respond, because another member wants to get on.

Mr Callahan: All right. Fine. Maybe you would like to respond to that, because I think legislation should be ongoing and it should be investigated on a greater basis than every 10 years to find out whether some of those concerns and fears were legitimate and whether we can go further with legislation.

Mr Oliver: I am new at this too, but I can tell you right now that big business historically is profit oriented. I believe that the government is mandated to look past profits and take care of the workers. That is why you are here. I do not see a division between labour and business. I see profits on one hand and human lives on the other, and business is not going to do anything voluntarily. They are going to have to be legislated into it. They are not going to put profit aside for anything, and they have to be legislated. Although it is unpopular, that is your job and that is what we are looking for, for the members of this committee and this government to do their job.

Mr Mackenzie: I would hope that all members of this committee and all members of the government were interested in improvements that are obviously needed in workers' compensation, but I think you are aware that Bill 162, which sure did not improve it for workers, was not voted for by all members of the government, only government members.

I would like to ask you if you do not think that your own government that professes to be interested in the health and safety of workers and in the need for world-class legislation would be bringing in a bill which very clearly still excludes

a large number of categories of public sector workers.

Mr Oliver: The unfortunate part, I guess, about all this is that the government is our employer. I guess that is the hardest part to swallow. When you look at the correctional and health care workers whom you are a direct employer of, all workers require the dignity of a safe workplace, but correctional officers who are being maimed on the job, who are dying when they are 50 years old, who are not surviving—if anybody can stand up in front of me and tell me that these people do not have the right to refuse to work under dangerous conditions, when I am told to take an inmate by myself to Ottawa who is going to be transferred to the penitentiary or I am told to go in and break up a fight between two inmates without using mace, it is ridiculous. I and my fellow brothers and sisters have to have the right to refuse. If you as our employer do not understand that, by God, I do not see how anybody else is going to.

Mr Mackenzie: So there is something sadly lacking when the government is not willing to have this so-called world-class legislation cover its own employees.

One further question. Do you agree with the position we have taken that given the uncertainty over what the final draft of this legislation is, it might have been more useful for you in your presentations if we did have the Minister of Labour before this committee to clarify just exactly what he does mean with some of the statements he has been making?

Mr Oliver: I come from a small jail, and this year I just happen to represent a lot of correctional officers. I am sitting at home trying to prepare myself for this, for probably one of the more important days of my life because I can have an effect on what happens to my brothers and sisters, and I come in here and find out that probably the government has already made its mind up before these hearing, and of course it is disillusioning. Yes, I would like to have the minister in front of me, but it would probably be a little stressful on both of us, so I guess maybe that is not a good idea.

The Chair: Mr Ball, Mr Oliver, Ms Kerr, Mr Patrick, we thank you very much for your presentation.

The next presentation is from the United Steelworkers of America, eastern region. Gentlemen, we welcome you to the committee this afternoon. If you will introduce yourselves, the next 30 minutes are yours.

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UNITED STEELWORKERS OF AMERICA

Mr Lloyd: Thank you very much. My name is Bill Lloyd. I am the eastern Ontario co-ordinator. On my right is Jack Ostroski, who is the staff representative and who is responsible for Kingston and area. On my extreme left is Emil Martin, who is the president of the eastern Ontario area council of the United Steelworkers of America. On my left is Peter Boyle, who is a member of the joint safety and health committee at Alcan in Kingston and is also the chairman of the Local Union 343, the safety and health committee.

Peter Boyle will make the presentation. Before he does, I wonder if I might ask through the chairman—I sat and watched the vote. I must say, having watched politics from afar for a long time and having had something to say about it once in a while, it is the first time I have witnessed a vote, and quite frankly I am amazed that none of the government members thought it was a good idea to hear the minister this week when it must be obvious to the world that the minister is creating at least some misunderstanding of what is happening. Quite frankly, I am aghast. Maybe the members on the government side know something that we do not and maybe they could tell us.

The Chair: I think when it comes time to have an exchange with you, if there is enough time that will undoubtedly happen.

Mr Lloyd: Okay. Thank you very much.

Mr Boyle: Honourable members of the committee, my name is Peter Boyle. I am a worker representative on a joint health and safety committee and chairman of the health and safety committee of Local Union 343, United Steelworkers of America. I wish to thank you, the standing committee on resources development, for the opportunity to address you today on such important matters and concerns within this area.

I appear before you to forward the concerns of over 1,500 steelworkers serviced by the Kingston area office, from Trenton to Cornwall and north to Madoc.

The proposed amendments to the Occupational Health and Safety Act embodied in Bill 208, as introduced 24 January 1989 by the then Minister of Labour Gregory Sorbara, and in particular the amendments proposed by the new minister, Gerry Phillips, in October 1989, cause us much concern, to say the least.

It is the position of the United Steelworkers of America that Bill 208, as originally introduced, while not covering all of our concerns, represents

a significant and important step forward for workers in this province.

This brief supports the proposals of Bill 208, as introduced, as a minimum standard to protect the health and safety of workers in this province. We oppose the current Minister of Labour's proposed amendments which amount to the government's cutting the provisions of this bill that originally was barely acceptable to labour. If the proposed changes by the Labour minister Phillips are advanced into law, workers in Ontario will pay dearly.

In this province, it appears that the doctrine of management's rights overshadows a worker's rights to protect his or her health and safety. The worker's rights are often measured in pain, suffering, disability and death. This government must not allow the erosion of workers' health and safety to appease the whining and threats of the business community. The government's refusal to acknowledge the major concerns addressed in the 19 proposed amendments submitted by the Ontario Federation of Labour will diminish the protection of workers in the workplace.

The United Steelworkers of eastern Ontario support those proposed amendments and throughout this brief will give examples as to why Bill 208 should be enhanced by the Ontario Federation of Labour's proposals.

Because of intense pressure applied by business, this government appears ready to accept proposals which, in our opinion, will rob the workers of their legal means to protect their lives and health.

The present act was a breakthrough in 1979 when it came into effect, but experience has taught us that Ontario did not go far enough to give us workers the knowledge, the resources and the legal rights to play our expected role.

Enforcement of the Occupational Health and Safety Act was based on an internal responsibility system which promised worker participation in health and safety. Worker participation is based on the premise that workers be sufficiently trained to carry out their responsibilities. The Occupational Health and Safety Act does not ensure worker representatives will receive sufficient training. The labour movement had to assume that responsibility. We support Bill 208, which would require that the worker centres and the occupational health clinics would become bipartite in their operations, along with the employer safety associations.

We also support the Ontario Federation of Labour's proposal in this area, which would ensure control by labour and management over

their respective associations, centres and clinics to direct the training requirements of the workers in Ontario as determined by the workers in Ontario. The Liberal government's amendments to this area of Bill 208 seek to dilute organized labour's influence on such boards of directors by placing others, including the unorganized, on the boards. The amendments that introduced also the concept of a neutral chairperson, in effect forming a tripartite organization, must be withdrawn.

This provision is unnecessary because labour and management can negotiate their respective positions, as they do successfully in collective bargaining, more often than not without third-party involvement. A supposedly neutral chairperson in our opinion represents government and business interests, not workers' interests. Such a person could actually determine the direction of training and research in this agency and possibly the future administration of the Occupational Health and Safety Act. This provision must be withdrawn.

Bill 208 must be strengthened in the areas of certified members and the right to shut down an unsafe operation, not weakened as the government amendments propose.

The internal responsibility system which is designed to keep the health and safety of workers paramount in the workplace is not working at a level which advances the needs of workers' health and safety. In fact, companies have tried and will try to erode worker participation to the extent that it jeopardizes the lives and health of workers in favour of the so-called bottom line.

In the past year, 1989, my employer Alcan Rolled Products Co, Kingston, has been the subject of two critical injury investigations by the Ministry of Labour inspectors. Just these two matters resulted in 14 orders issued, and appendix A attached covers both those sets of orders and the critical injury investigations. So far this year, in 1990, a further 36 orders, attached in appendix B, have been issued, with machines ordered shut down until compliance with orders has been met.

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The internal responsibility system must be strengthened. Where the Ministry of Labour inspectors have to issue so many orders; while critical injuries maim workers for life; these are no longer just accidents, these are indications that safety is deteriorating for one reason or another. The internal responsibility system needs the assistance of a certified member and the right to shut down unsafe operations which presents an

immediate danger, as proposed in Bill 208. Also, the certified member should be able to issue orders concerning hazards that do not pose an immediate danger, as proposed by the Ontario Federation of Labour.

This government must not cave in to the pressures of the profit line of business that measures the health and safety of workers in dollars and cents, not injuries and deaths.

The proposed amendment to distinguish between good and bad employers will serve to further erode the internal responsibility system by denying the rights to stop work in an unsafe operation because of the good health and safety record, not an immediate danger which can happen either in a good or a bad workplace.

The certified and trained workplace specialists would be accountable for their actions and, as a result of this accountability, these workplace specialists should not be restricted in the administration and promotion of a safe working environment.

One of the main building blocks of the present Occupational Health and Safety Act is the worker's right to refuse unsafe work. The provisions of Bill 208 advance this basic personal safeguard for an individual worker's health and safety by including the right to refuse an unsafe activity. This would offer protection against exposure to repetitive strain injuries and lend direction already expanded by the Ontario Labour Relations Board in the right to refuse activities such as lifting heavy loads. The Minister of Labour proposes to restrict the definition of activity to apply only to immediate dangers, thereby excluding ergonomic and other problems which lead to repetitive strain injuries.

In the years since the right to refuse unsafe work was introduced under the Occupational Health and Safety Act, we have not seen any evidence that the right has been abused by the workers in Ontario. But, in fact, the mounting statistics of workplace injury and death lend support to our position that the right to refuse is ignored by some workers because of the workplace pressures to meet production levels first, then worry about health and safety later.

My observation is that Alcan management often complains that the Ministry of Labour orders issued in the aftermath of a critical injury investigation or random workplace inspection is the question of the effect of the cost to the company to comply with such orders, not the effect of the orders to protect the life and limb of workers. This only serves to undermine the workers' determination to protect themselves

because of a perceived competitive disadvantage to the company of the cost of safety compliance. The Ontario Federation of Labour's proposals requiring certified members to investigate all workplace complaints, and the decrease of the response time period of safety committee recommendations to management to within seven days would address this concern.

The health and safety of workers in Ontario must be addressed in the finalized Bill 208, not left to the collective bargaining process. As steelworkers, our union has consistently lead the way in the areas of mining and industrial safety. The steelworkers will continue to lead the way on issues of health and safety in the workplace by continuing to incorporate elements above the minimum requirements of the Occupational Health and Safety Act in collective agreement. However, collective bargaining can take years to implement and worker protection should not have to be part of any such negotiations if this government has any consideration for the working men and women in Ontario, organized and, in particular, unorganized. The government's intent to gut its own proposed law introduced just over a year ago will ensure that labour will mourn for our dead as we wait for collective bargaining to address health and safety concerns.

In 1988 my local union had to proceed to arbitration to force the company to live up to its commitments in the collective agreement on health and safety. That is covered in appendix C attached—the results of that arbitration. One of the three members of our joint health and safety committee, which represents over 300 workers, was arbitrarily and without notice deemed removed as a worker representative in a move by Alcan Rolled Products Company, Kingston, to reduce the committee numbers. This was at a time when Bill 79 was in force and Bill 208 was being prepared for first reading. While the responsibilities of the employers and workers were being expanded, this company was trying to go backwards.

We were successful in arbitration, as in appendix C attached, but we maintained that only effective legislation can assure workers that their health and safety is protected from management whims or the exercising of management rights and prerogatives.

Through discussions at our steelworkers' president's council meetings in the Kingston area, it is clear that workers at Alcan are not unique in our problems. This type of corporate mentality is evidenced by the increasing orders being issued by the Ministry of Labour inspec-

tors. This type of corporate mentality must be addressed in the provisions of Bill 208. This type of corporate mentality must not be allowed to roam freely through the workplaces in Ontario, should the Liberal amendments introduced to water down this bill be successfully incorporated.

In closing, I will produce the Ministry of Labour inspector's written observations of the state of health and safety in my plant after a recent inspection on 30 January 1990. I have enclosed the appendix but I will read it also.

"The ministry workplace inspections are intended to audit the internal responsibility system of any workplace. Orders are only issued where the minimum acceptable standard, as defined by the Occupational Health and Safety Act and industrial regulations are not being met. It is expected that any employer must be capable of meeting at least this level of safety performance. 1989 saw the ministry conducting two critical injury investigations. The last ministry inspection resulted in 26 orders being issued; this inspection, 36 orders. It is not the intent of this officer to lecture the employer and I will not do so. Simply, what are the results from the many hours and dollars invested in safety at the workplace? The injured workers, the ministry orders, the investigations conducted, the Workers' Compensation Board claims, all are indications that things must improve."

That is his observation. Health and safety of workers in Ontario will not happen by itself. Legislative direction is required to stop the pain and suffering, disabilitation and death in Ontario workplaces. This Liberal government took steps in the right direction by introducing Bill 208. If the government is truly interested in health and safety in Ontario, the minister will withdraw his proposals that weaken Bill 208 and introduce proposals like the Ontario Federation of Labour's 19 positive amendments and other positive amendments proposed by concerned unions at these hearings across Ontario. The slogan Fight for the Living, Mourn for the Dead, will surely remain the battle cry of labour, until health and safety issues are really addressed in the workplace.

We respectfully request that the foregoing be considered in this committee's deliberations and that you bring forth recommendations to the Legislature that will ensure the rights and protection of workers in all places of employment in the province of Ontario. I thank you for the opportunity to make these representations.

The Chair: Thank you, Mr Boyle. We do not have much time left, about 10 minutes, so I would urge members to be brief.

Mr Riddell: Mr Boyle, like you, I was pretty naïve about the political process until I became involved. After 17 years of experience, I have learned to appreciate how the democratic system works. You express wonderment at the way in which the Liberals voted on the resolutions submitted by Mr Wildman. Perhaps I could tell you what the process is. A bill is introduced for first reading and then it goes in for second reading, where there is considerable debate by all three party members. If there appears to be a great difference of opinion, one of the party members will ask that the bill be referred to committee, and that is where this bill is at the present time. So we are travelling this province to listen to all the input that groups, individuals, whatever, may wish to give to this bill. Then we will go back as a committee and when we start clause-by-clause we will have all of these recommendations, including yours—and yours was a good brief—they will be summarized, and we will be taking those recommendations into consideration when we, as a committee, will bring in some amendments to the bill.

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This week is completely used up. We are going to be working all day Wednesday, all day Thursday and all day Friday on presentations that have been prearranged. And in order to have the minister come before us, it means that some of these others are going to have to cancel out, because I cannot believe that the minister would come before this committee and lay down amendments without considerable debate about those amendments. I, for one, am a member of this committee who hopes to bring in the best bill we can, and I will certainly be actively participating in committee when we consider all of the recommendations that have been given to us as we travelled around the province. I would far sooner do that than have the minister come before me and tell me what I am supposed to do, because I am not one who is easily told. I will be expressing the views that I have after hearing all the input from you people when we get to the committee stage, and it will be the committee that will be bringing amendments. And if, indeed, the minister wants to put his own amendments in, which he has the democratic right to do, and if we do not happen to agree with it then it is up to us to convince him that he is wrong and we are right. So that is the way the process works and that is the reason that we voted

as we did, because I want to hear the rest of the submissions and then, when the minister is slotted in to bring us his amendments, we will be debating those as well.

Mr Lloyd: I guess it was a nice sort of lesson on how the committees work, but as to my direct question; again, the question is, why is it that not one of the government members recognizes, as I think the whole world recognizes, that the minister has muddied the waters? I recognize we do not want to be advocating that somebody be bumped out of their spot to make a presentation before this committee, but when the minister makes public statements that, in my view, really cast a hell of a shadow of doubt on the viability and even the process itself—I mean, the ministry, in my view, makes a farce of this process with this committee. I am absolutely amazed that none of the government members has the same view. Really, that is what I hope that one of the government members would address.

Mr Riddell: Obviously, I failed in my explanation.

The Chair: You failed, Mr Riddell.

Mr Riddell: We will try again sometime.

Mr Lloyd: Sounds like a previous government member.

Mr Mackenzie: The motion was simply to have the minister explain to us just what his position was before we finish the hearings so some of the people before us would know, rather than reporting to us in the press as he seems to be doing on a regular basis now.

I want to say first your appendix D, I think, really is a pretty powerful document. Your comments on page 10—I simply want to read the one sentence out of this. You are talking now about the number of orders and the problems you have had at Alcan, one of the major companies in this country of ours, and the number of orders and the safety and health standards that are not being complied with. Your comment I think is apropos. Orders are only issued where the minimum acceptable standard, as defined by the Occupational Health and Safety Act and industrial regulations, are not being met. So, what you have got is a failure to meet even the minimum standards in a major company in this province and you still end up with the number of orders that you have outlined here. I think that, as much as any brief we have had—it may not have the same emotion in it but clearly outlines the necessity for important changes in health and legislation in this province and I commend you for bringing it to us in just exactly that form.

Mrs Marland: I wondered if, as an opposition member, I might invite you to extend your comments on the motion that was placed, because I think the question of what we are doing, as you have so well addressed is a very—

Mr Dietsch: This is better than TV ads.

Mrs Marland: You have addressed it very accurately. It has been a very real concern, certainly of our caucus. And I am on record at the committee when, in fact, before we started on the road—and we did have a briefing with the minister—I asked if we could have the government amendments before we went on the road for the very reason that you are stating, the concern today; and for the very reason that everybody who has spent time and money and a tremendous amount of personal effort to appear before this committee, on both sides of management, the employers and the employees; and while, in the meantime, not only have we had a minister sitting in the wings on the pretence that his amendments would react to the input of this committee—of course, he still has an opportunity to prove me wrong. Using the word “pretence,” perhaps I will be wrong.

Mr Fleet: It would not be the first time.

Mrs Marland: But, in any case, the fact of the matter is that we are in a situation where we are asking you to come before us and inviting you, as our chairman says so well, and for the first time—and I do not have a great deal of experience. I have only had five years of travelling with legislative committees, but I have never travelled with a legislative committee before and in three different towns read in the local paper what the minister is saying today on the very legislation and the very hearings that we are conducting.

So, I just wanted to ask you if, based on your experience with your organization; even if you think back only one year to Bill 162, I do not recall and I wondered if you did, whether Mr Sorbara was going around telling everybody what he was or was not going to do while we were in the middle of our public hearings?

Mr Lloyd: I certainly do not recall that happening. That is a short answer. Perhaps I would be permitted a question in return. Could I ask the member if it is the member's position that she supports Bill 208 as it was introduced originally?

Mr Carrothers: Good question.

Mr Callahan: You should be up there. Do you want my seat? Or I will go sit there.

Mr Lloyd: No. I might come and get it one day.

Mr Callahan: By all means.

Mrs Marland: You know, the funny thing about politicians is that—

Mr Fleet: I do not hear an answer yet.

Mr Lloyd: You will never get a straight answer.

Mrs Marland: No, you will get it.

Mr Callahan: Yes or no. We are talking about politicians who never answer the question.

Mrs Marland: The funny thing about politicians is that I think, in order to be a politician, we all have to have a certain amount of ego. I must say that at the end of these hearings, of the four weeks we have had so far, that my ego should be inflated tremendously because I am the only member of this committee who gets asked that question directly. I should be terribly flattered by it, that you are so concerned about—

Mr Callahan: It was a good question.

Mr Fleet: She has not answered yet.

Mr Riddell: And the answer is.

Mrs Marland: I did say, the last time I was asked—

Mr Callahan: We are going to vote on that answer.

Mrs Marland: I was asked if I was going to vote against Bill 208, but obviously the coaches have refined the question, and he is sitting over there on the end of the row. Anyway, in answer to Mr Forder, through you, sir, I am opposed to Bill 208.

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Mr Callahan: We are running out of time.

Mr Lloyd: Just so there is no misunderstanding, I ran as a member of Parliament in two elections federally and one municipally, and I do not need Mr Forder or anyone else to tell me what to say when I am up here. And may I be so impolite as to suggest that if you have been asked the question that many times, perhaps it is about time you had an answer.

Mrs Marland: I have answered it. Oh, well, just a minute. No, in fairness—

Mr Lloyd: I am sorry. I understand you said you were opposed. Is that correct?

Mrs Marland: I have answered the question every time I have been asked, sir.

Interjection: Answer it now.

Mrs Marland: I just did answer it. I said I am opposed to Bill 208.

The Chair: Mr Martin, Mr Boyle, Mr Lloyd, Mr Ostroski, we thank you very much for your presentation and the exchange.

The next presentation is from the Labourers' International Union. Gentlemen, we do welcome you to the committee, and we look forward to your presentation. The next 30 minutes are yours.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA

Mr Connolly: My name is Tom Connolly. I am the senior assistant manager with the Labourers' Ontario Provincial District Council. I want to thank your committee, and especially Lynn Mellor, for allowing us this opportunity to present our views on Bill 208.

The Chair: Ms Mellor will appreciate that.

Mr Connolly: Sure. On my right is our legal counsel Jules Bloch, who will be giving you an overview on the brief. What we are not going to do is read the brief; we are going to give you an overview of its contents. As you can see, we made the brief short and made our points as to what we feel is very important to us. On my left is Mike Quesnel. Mike is with the Quinte-St Lawrence Building and Construction Trades Council. He has asked to join our group, if you have no objection, to make some comments regarding the presentation you had this morning from that fine group from the Frontenac-Kingston building trades.

In a couple of comments of my own, I say in reply to what they said this morning, first of all, I think I only agree with one point they made, and that was when they said that we need better safety rules and regulations in the workplace. Then they went on to say that it should be for 50 people or more on a work site. Of course, that eliminates 90 per cent of the construction work sites in Ontario. So one point they said is we need better safety legislation.

The other point they made which I agree with is that we need more inspectors. Of course, as one of your committee members stated, they should be trilingual, because a vast number of the construction workers speak three or four different languages.

When you get to the point that they made this morning on the lost time due to injury, they said that in Ontario we have a very good record in the construction industry. One of the reasons we have that good record is we have been finding out lately—I do not know how long it has been going on—that the employers, especially the nonunion employers, have not been reporting the lost-time

injuries due to accidents. What they have been doing is keeping the people on the payroll at full wages.

We had an incident about six months ago where we organized a major roadbuilding company in southwestern Ontario. When we went in to negotiate the collective agreement with him, he stated that in one and a half years he did not have an accident on the job site. Now, as most of you know, roadbuilding construction is heavy, it is dangerous and even the lawyer who is representing him said to me, "How could he go for one and a half years without an accident?"

When we finally did get a collective agreement and we checked with the employees—and mind you, he had 60 to 90 employees—they told us that what he used to do was tell them: "Don't go on compensation. I'll pay you full wages if you have to stay home or I'll give you a very light job." When you look at the figures there and when that association stated this morning that we have a great record in Ontario, we have a very good record in Ontario, all right, but not as good as what they like to make us believe.

With that, Mr Chairman, I will hand you over to Jules Bloch, who will give you an overview of our brief.

Mr Bloch: The Labourers' International Union of North America, Ontario Provincial District Council, represents 39,000 construction labourers in Ontario and 15 local unions. It is the end of the day, so I am not going to read my brief and so you cannot follow around with your yellow pens. I want to look at a philosophical overview about what we thought was going to happen in Bill 208, what we intended to happen, and discuss the highlights of the brief.

The brief is very narrow. It deals with the construction industry. This organization, the labourers, is on record in supporting the Ontario Federation of Labour's brief as well as the Provincial Building and Construction Trades Council's brief. I am sure you have read both those and are familiar with them.

First, the methodology used by the government to arrive at the original Bill 208 was something we supported, the idea of having an ad hoc committee of major unions and major employer groups sitting together and getting to the root of the problem and then trying to paint language—and as a lawyer I see how important it is that you have language—to solve the problem. That is one of the problems I have here today when I come before you.

I have Bill 208 which I can react to, but the rest of my comments are reacting to musings from the

Minister of Labour, a different minister from the one who prepared Bill 208, what I understand his musings are across the province, and I have to try to put clothing to those musings. I am trying to do that. So I am using it as a stalking horse and also reacting to what he has said concretely in the 12 October speech to the Legislature. Forgive me if I am not as precise as I might be before a labour board or before the courts, but then I have to say that I have not been handed precise language to react to.

The Chair: I just want to make it understood that there is the 30-minute time limit which we adhere strictly to.

Mr Bloch: Yes. I am comfortable with time limits.

Mr Callahan: No lawyer is ever comfortable with time limits.

Mr Bloch: Let me cut to the chase then.

Problem number one—that is evidenced certainly in our page 3—is, who is the employer? There you have concrete language from Bill 208. We are worried on a construction site that it can be interpreted that the employer is the individual contractor to subcontractors. That would mean that when you play the numbers game on the construction site—that being, trying to say that the site has 20 workers, therefore getting a joint health and safety committee—that a court will analyse this as being not 20 for the site but 20 for each contractor or subcontractor.

Our position and our recommendation is very clear. You have to create language which specifically says “20 employees on the construction site.” For the purposes of who the employer is, you must look at the contractor, subcontractors and general contractors together. So it is the subtrades, the trades and the overall contractors together that are the employer for the purposes for the count of 20 employees on the site. That is very important to us.

Second, the issue of certified member: I want to be very clear that after the discussions between the unions and the management group, with the government playing the chairperson, we came to the understanding that, for construction at least, you would be looking at joint committees for 20 or more. As well, in that situation, the certified member would be appointed for construction sites lasting more than three months.

We understand, again from the musings of the minister across this province, that has now changed and that somehow we are looking at 50 workers and six months. That for us is an impossibility. There are very few sites that would fit that criteria. You are giving an exemption to

management on that basis. I want you to know that. I want you to appreciate that.

As well, with respect to the certified members, there is the appointment of the certified member. This is very important. The act as it stands talks about a pool of certified members coming from the construction industry. This creates two problems, as we see it. Number one, it creates the possibility of having jurisdictional issues fought in a safety context. If you have plumbers looking over labourers' work, there will be arguments of putting plumbers at work rather than labourers, supposedly for safety reasons. In fact what will happen there perhaps is a jurisdictional wrangle. I just want to bring that to your attention. I do not think it is a point that has been brought before you before.

1500

As well, in this context, you have a certified members pool. You are bringing offsite employees on to the site to supervise indigenous management and labour groups. That creates huge problems. The certified member should come from the trade or subtrade on site as well as the employer. The employer representative should be from the trade or subtrade on site.

While we are on this point of certified members and the right to shut down, this good cop-bad cop dichotomy is an impossibility to administer. Deciding who the good cop and who the bad cop, ie the good employer and the bad employer, is would probably result in a new tribunal, I guess, but that is okay. That will make work for people like me. Seriously, it is an unfathomable problem that should not be contemplated.

Inspections: In a construction site situation, clearly one inspection of part of a work site over a 12-month period is an absurdity, because many projects, most projects actually, are finished within 12 months. So you are indicating that there will not be any inspections for those sites.

Residential sector: This is very important. Something that we have not turned our minds to is that it seems that under the old act, and continuing under the amendments, the residential sector has been excluded from the Occupational Health and Safety Act. Our position is that a construction site is a construction site, regardless of final disposition or use, and the act and regulations must apply to all construction sites in Ontario. We cannot have the residential sector excluded.

Bipartism: I will deal just quickly on bipartism. The idea of the internal responsibility system is about workers and management taking

care of safety at the workplace. Anything that undermines that idea takes away from the philosophy of treating workers and management as equal partners, the duality of the workplace. If you throw in, for instance, a neutral chair, what you are doing is saying: "Workers and management, you cannot come to grips with your problems in the workplace by yourselves. We the government as an employer and a supposedly neutral third party have to come in and regulate your affairs." That undermines the spirit of the internal responsibility system. I know that is something you do not want to do.

When we analyse this act, we have to go back to basics and we have to try to look at what it means with respect to the internal responsibility system. How does it derogate from that system? Anything that derogates from an equal partnership between workers and management in the workplace vis-à-vis the carnage of workers at the workplace is something bad. Anything that proffers or helps lift up the internal responsibility system of workers and management in the workplace is something good.

The Construction Safety Association of Ontario and the Council of Ontario Construction Associations brief: I cannot leave here without saying a few things about that. I am sure, like you, I was fascinated by COCA's brief. I learned that people like Tom Connolly, and I do not know the brother to the left, sat on CSAO, believing that it was some type of bipartite institute. Well, COCA's brief is clear in saying that the CSAO is a private organization operated by construction owners for the industry's benefit.

I am sorry, Brother Connolly, but you have participated in an employer scheme at safety and self-admitted by COCA. I do not know who writes their briefs, but that is what they said.

Again with respect to COCA's brief, they have a big push. To be fair to them, they are worried about taxpayers' money and I can appreciate that. They claim that the idea of creating a new agency will in some way impede the taxpayers.

In reality, all we are asking for is shifting the money from the CSAO and the different like organizations and putting it into a bipartite organization. There will be no extra money; it is a shifting of money, taking it away from an organization which we believed to be bipartite in the past but which COCA unmasked for us as an employer-dominated organization.

COCA was very insulting to workers. You had before you today Mr Ball. I have never met the man; I just heard him today. COCA said that workers would be manipulating and unscrupu-

lous in regard to the right to shut down. Those are their words from their brief. I saw Mr Ball here today pleading with you for just the rights to keep up with management. There was a question from the member who is no longer before us, who seems to have left for the moment, saying, "Mr Ball, we want to help you." The only way you can help Mr Ball is by ensuring that he has some legal clothing with which to take his fight on.

What the minister in his musings across this province is doing is taking away Mr Ball's legal clothing to fight. Mr Ball is at a disadvantage when he goes into that fight and the minister wants to perpetuate the disadvantage.

Finally, two points. With regard to the slides on the lost-time duty injury, I agree with Mr Connolly. You saw it in the mining industry. You people did the report on that and it was a fascinating report. It was great reading. It is the same game. Do not be fooled. I do not believe Mr Riddell will be fooled by that.

Mr Riddell: You want to believe it. I am my own man.

Mr Bloch: I want you to realize what is happening, and again with COCA's brief. They say one of the objectives of COCA is with respect to the profit motive. They come out right in the first three paragraphs saying, "We represent our members with respect to increased profitability." I want you all to remember your first year economic courses which some of you might have taken, and I am sure you have all read about it—the guns and butter issue. It is the same thing here.

It is safety or profits, and you have to decide. Are you going to hand COCA and the members of those organizations full profits and no safety, or are you going to hand the workers safety and less profits? That is your decision to make. On that issue, when you go to your Gallup polls, I can assure you that if you put the question in those terms to the people of Ontario, safety will beat profits, because most of the people are workers.

I thank the committee for allowing me to appear and discuss the musings of the minister as well as Bill 208. I believe there are some more comments to be had by Mike Quesnel.

1510

Mr Quesnel: Mr Chairman and members of the committee, I would like to say thank you for allowing us to speak today. I feel it would be out of character for us not to say something in view of the remarks that were made by the first people who addressed you this morning, namely the Kingston Construction Association and the

Kingston Frontenac Home Builders' Association.

First of all, I want to say that my name is Mike Quesnel and I am here speaking on behalf of the Quinte-St Lawrence Building and Construction Trades Council which has an affiliated membership in this area of approximately 3,000 construction workers. I just want to point out that I am also a member of the local regional labour-management safety committee, which is part of the CSAO setup. I am also a member of the provincial labour-management masonry committee. I am also past president of the provincial labour-management committee, which includes all trades. I am still a member of that committee, and I am also one of those 13 labour directors of CSAO they were talking about this morning.

Before I start dealing with the situation of what they commented on this morning, I just want to deal with—this whole safety situation in the Kingston area started back about 1965 and I was involved at that time in the formation of the first regional safety committee in Kingston. Since that time it has been an ongoing thing, and there has been much improvement and much better co-operation between both labour and management.

To give you a little bit of the way this works, the regional committees have some input into the provincial committee and then we take information from all over the province, feed it back all over the province and then try to reach consensus through labour and management at the provincial level and then go into recommendations through the Ministry of Labour and so on.

I have met personally with the various ministers of Labour—to name some of them, Bill Wrye, Greg Sorbara, Bob Elgie, Mr Ramsay prior to them—all dealing with safety in the last 20 to 25 years. I can truthfully say that I have literally taken hundreds and hundreds of trips to Toronto dealing strictly with safety. When Mr Sorbara was Minister of Labour he requested me to come down and spend a day and a half in Toronto on a consultation basis with him about what we are talking about today, Bill 208. So I am not new to this whole Bill 208, but before we get into Bill 208, I want to spend a minute or two on safety inspections.

I have no axe to grind with the Ministry of Labour, absolutely none. Some of my best friends are involved; namely, Walter Melinys-shyn and a few others, some of the previous directors. Locally we have a good rapport with our Ministry of Labour inspectors. The whole truth of the matter is that there are not enough

Ministry of Labour inspectors in Ontario. We have gone from a complement of 131 to much less than 100, and of the less than 100 we have now, some are office staff, not field staff. I dare say that for the number of inspectors out in the field across the province today, there are just a few more than 60 to 65 inspectors.

There is absolutely no question that the government of Ontario, be it Liberal or be it Conservative, has any intention of increasing the number of safety inspectors in the province, absolutely none. Under the former Conservative government, we pleaded with the then Minister of Labour to increase numbers and they did increase numbers, I believe over a period of six years, by 11 inspectors. Eleven inspectors in Ontario is not a drop in the ocean. There is absolutely no question that the government has no intention of increasing the number of inspectors.

It is also a known fact in Ontario that inspectors, because of a shortage of staff and through no choice of their own, are only responding to telephone calls. There is no longer any such thing as a routine inspection. That fact has been admitted by the upper echelon of the Ministry of Labour. If someone phones and makes a complaint you get quick action to have the site inspected, but if no one phones, I dare say there are many, many hundreds of sites in Ontario that do not receive an inspection once a year and possibly every two years. There are construction sites in Ontario that are being built and have never been visited by a safety inspector.

The previous Minister of Labour, Greg Sorbara, in many, many meetings started this turnaround process and said that it just is not possible to hire enough inspectors to police Ontario, absolutely impossible. What we have to do is we have to go to management and labour and see if they will do their own self-policing. There has to be a better system.

This is when the recommendations for Bill 208 all started. With the numbers games we are seeing today, there are 50 workers on a construction site before you have a safety committee. It is absolute bastardization of Bill 208, absolute. You would be exempting at least 90 per cent of your construction sites in Ontario.

I dare say that the only area where you might have a reasonable impact would be in the Golden Horseshoe area where they have megabuck projects. We do not have those megabuck projects here. We are talking about projects of anywhere from \$500,000 to maybe a maximum—I think the average large projects we do here are

\$12 million or \$13 million. We have the odd exception like the Goodyear plant, but that is one that happens every 10 or 20 years. They are not everyday projects. We are talking about everyday construction projects, everyday construction workers.

To say that you have to have 50 workers on a construction site before you have a safety committee is unrealistic. It will never work. When we first made our proposals known—when I say “we” I am not talking just about the union. We are talking about the provincial committee, all the regional committees and where we reached consensus between labour and management at the provincial committee—our recommendations then went to the Ministry of Labour.

When we first started to discuss this back some years ago, we were talking in terms of 10 men on a construction site, 10 employees employed by all trades including the general contractor. It came back from the management side that that was not realistic. The Ministry of Labour said it was not realistic. Okay, so we played a numbers game. At that time, the minister, Greg Sorbara, asked me, “Mike, give me something on numbers,” and I did. I said, “Okay, up to 20 workers, a safety representative”: 20 to 29, I believe was the figure, a safety committee of one and one; 30 to 40, a safety committee of two and two; 50 and over, a safety committee of three and three. His reaction at that time was, “That sounds great.” It was going on paper as a proposal from the minister, but in the meantime an election came up and he got taken out. So there went that part of it. That was Bill Wrye.

The Chair: Mr Quesnel, it is entirely up to you whether or not you use the full 30 minutes, but there is only five minutes left.

Mr Quesnel: Yes, that is fine.

The Chair: If you want to use it, it is fine. I am not objecting, just as long as you know.

Mr Quesnel: Well, I want to use it. I want the committee to know the history of this thing and where we are going and what has happened to it.

The Chair: That is fine. It is up to you.

Mr Quesnel: We go to where we were sitting last year prior to the last election. We were told until the 11th hour that Bill 208 was to stay the way it was. All of a sudden we get a change in the Minister of Labour and all of a sudden it has been watered down, deleted, and I do not think they are anywhere near done with it.

I am going to tell you this: labour feels it have been sold out. I think this committee should feel it is being sold out because of some of the

statements the Minister of Labour is now making, such as what he said in Kitchener this morning. You pick up the daily commercial news, he is being quoted as saying all kinds of things.

I think that the whole Bill 208 has been completely—on the way to being out. That is my opinion. I am going to tell you that there is going to be a reaction from labour in this province if that so be the case, somewhere down the line. We are well aware that once this Bill 208, whichever way it goes, is put to bed we are talking about another 10 years before there are major revisions to the construction safety act, because the last revisions were in 1979. We may be talking 1999 or the year 2000 before we get another crack at the can and we do not know if we can wait that long.

We attended a meeting at noon today where it was announced that this year so far there have been five fatalities in the construction industry, and we are only one month into the year. I could go on and on, but there is not much point to it. I would be more than happy to answer any questions you might have.

Mr Wildman: In the interest of time, I will just ask one question in relation to the presentation that was made to us this morning. The construction associations across the province have expressed a great deal of concern to us about representation for unorganized workers. It is really interesting how concerned they have become about representation for unorganized workers on the agency and in regard to development of health and safety regulations and programs.

They indicated to us this morning that they would be prepared to provide a pool of workers for the agency and for training. Do you have any idea, since you represent the organized members of the construction trades, how your employers, the contractors, might go about choosing these unorganized workers, and who do you think they would represent?

Mr Bloch: I would like to deal with that in terms of a philosophical understanding of labour relations in the province. Certainly, by an employer choosing someone under its employ in a nonunion setting, that employee has no mechanism, from that nonunion employer, to be representative. Barring some type of vote within the workplace, there is no other way those nonunion workers can be found out, in terms of who is going to represent them. What we want, our first position, is that the organized workers certainly will represent and have represented the

interests of the unorganized before you and before all levels of government.

There is presently no mechanism in the laws of Ontario for the nonunion employees to designate representation. The only mechanism there is, is for them to join unions and to become represented in that fashion. Barring that, again the conclusion is that the unions in the field would make representations on behalf of the unorganized. Workers are workers and we feel that the unions already existing are the proper group to make those representations.

The Chair: Mr Quesnel, Mr Connolly, Mr Bloch, we appreciate your presentation to us this afternoon.

That completes our hearings in Kingston. I hope it has been a productive day. I think it has been. We will adjourn now until 10 o'clock tomorrow morning in the Ontario Room South in the Macdonald Block in Toronto. That is the room that has been set aside for tomorrow. There will be taxis going to the airport in about 10 or 15 minutes out front.

The committee adjourned, at 1523.

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Witnesses:**From the Kingston Construction Association and the Kingston Frontenac Home Builders' Association:**

Armitage, John R., First Vice-President, KFHBA

Corsi, John, Director, KFHBA

Kelly, K. C., Past President, KCA

Fyke, Al, Director, KCA

Smith, Barry, President, KCA

Brisebois, Denis, Past President, KCA

From the Kingston and District Labour Council:

Wilson, Gary, President

Signoretti, Ken, Executive Vice-President

Madden, Angela, Health and Safety Representative, Canadian Union of Public Employees, Local 1302

Stock, Charlie, Vice-President, Canadian Auto Workers, Local 1837

From the Canadian Paperworkers Union:

Guenette, Denis, Representative

From the Ergonomics Research Group:

Bryant, Dr J. T.

From the Communications and Electrical Workers of Canada:

Dejeet, Aubrey, Representative, Health and Safety Committee

**From the Peterborough Labour Council and the Ontario Public Service Employees Union,
Local 453:**

Ball, John, Executive Officer, PLC

Oliver, Mike, Stewart, OPSEU, Local 453

From the United Steelworkers of America:

Lloyd, Bill, Eastern Ontario Area Co-ordinator

Boyle, Peter, Chairman, Health and Safety Committee, Local 343

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Connolly, Tom, Senior Assistant Manager, Labourers' Ontario Provincial District Council

Bloch, Jules B., Legal Counsel

Quesnel, Mike, Quinte-St Lawrence Building and Construction Trades Council



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Publications

No. R-14 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on Resources Development

Occupational Health and Safety Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Wednesday 14 February 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 14 February 1990

The committee met at 1009 in Ontario Room South of the Macdonald Block.

OCCUPATIONAL HEALTH AND SAFETY STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Chair: The standing committee on resources development will come to order as we pursue the public hearing process on Bill 208. We have a large room today, not because there are so many people in it right now but because we expect a large turn-out later on this afternoon, which is why we have moved from one of the regular committee rooms to this committee room. Mr Wildman has a point of something.

Mr Wildman: Yesterday you know I moved a motion that was subsequently debated briefly and defeated in the committee. In that motion I proposed that we invite the Minister of Labour (Mr Phillips) to come to the committee to clarify what amendments would be placed by the government to this bill. Some controversy erupted subsequently as to whether or not it is appropriate or possible for amendments to be tabled in a committee prior to clause-by-clause debate. I would just like a clarification from you, as the chair, that my understanding of the rules is correct, that amendments can be tabled in a committee at any time during the committee stage.

The Chair: Yes, Mr Wildman, you can table or present amendments to the committee at any time. We would of course not allow debate on those until we had completed the public hearing process and begun the clause-by-clause debate, but they could be—

Mr Wildman: That was my understanding.

The Chair: The first presentation this morning is from the Ontario Chamber of Commerce and we have Linda Matthews and Wallace Kenny with us. We welcome you to the committee and we look forward to your presentation. I think you understand that each presentation has 30 minutes and that can be used up entirely by the presenter or by saving some of that time for an exchange

with members, so we welcome you to the committee.

ONTARIO CHAMBER OF COMMERCE

Mrs Matthews: I am the Linda Matthews part of the group, in case there was any doubt in your minds. I am president of the Ontario Chamber of Commerce for 1990. With me this morning is Wallace Kenny, who is the vice-chair of the employee-employer relations committee. We appreciate this opportunity to meet with you on behalf of our 165 member chambers and boards of trade with a combined membership in the province of 65,000.

In coming before you today we would first like to restate the chamber's commitment and concern about health and safety in the workplace. It is an issue we have always taken very seriously and one we believe must be jointly shared by the employer, the employee, government, union, management; all parties and all sides are required to take responsibility. In our submission today we would like to point out our members' concerns about Bill 208 and where we feel it fails to bring about the co-operation necessary for true progress to be made. I would like to leave that discussion for my colleague to carry on and point out the specific areas in Bill 208 on which we have concerns.

Mr Kenny: I think we can all recognize that this bill has created what one might call a bitter controversy between the parties which the government has indicated it wishes to bring together to co-operate in improving health and safety in the province. From what I am aware of, I know this committee has heard submissions on both sides of this issue and they seem to be fairly diametrically opposed. I think that is very unfortunate and the chamber considers that to be very unfortunate, because the bill seems to be creating the opposite reaction from what the government would like it to create. If this agency is going to be effective, it is going to require the co-operation of the government, management and labour.

I think it is important that this committee get an understanding of why the business community is so opposed to some of the changes that are being proposed by the bill. I think what Mrs Matthews said earlier has to be kept in mind. There are no

sides to this issue. It is in the interests of the employers to ensure that health and safety is improved in their workplaces because it means they have a more productive workforce, lower workers' compensation costs and a stable employment force. That is in their interests. It is also obviously in the interests of employees and their representatives. So let's not make the mistake of thinking people who are opposed to the changes in the act that are being proposed here in Bill 208 are opposed to health and safety. That would be a grievous error.

We are going to highlight today mainly the work refusal sections of the act. I know you have heard submissions from various business groups on a wide variety of the provisions, and frankly our membership would probably support most of that criticism, but we do not think it is fruitful today to talk broadly. We think you are going to get enough of that. I think it is important that we focus to some extent on what some of the major concerns are.

We all, I think, might remember when these work refusal sections came into the act. It was not that long ago. I am guessing here but I think it was 1978 or 1979, somewhere in that area. The business community at that time objected quite strenuously to that inclusion. They said it would be abused and they were accused of crying wolf and somehow not recognizing that it would be a useful tool.

Perhaps some of that criticism was warranted by those people who were not in agreement with the business community, but what you must recognize is that we now have had experience with the existing work refusal sections, which are individually based. I can tell you that while many employees utilize these work refusal sections in legitimate circumstances, every employer has had occasion—"every" may be an exaggeration, but many employers have had many occasions on which these work refusal sections have in fact been abused and where there is no significant danger to the work or where the employee is utilizing them because he is not interested in doing the work or for reasons other than health and safety.

There has been an enormous amount of lost production time as a result of the existing work refusal provisions. That is not now rhetoric. That is reality.

I do not want to suggest to you that you can eliminate that kind of thing entirely. If you are going to provide an effective tool for individual workers to have available to them to refuse work in some circumstances where there is danger,

you are going to leave a section that is open to abuse by others who are less responsible about their rights. That is the case in any legislation. We recognize that and we are not suggesting here today that you should remove the existing provisions, because I think experience has shown they can be effective. But what we have also seen is worker representatives, union representatives, utilize in a number of different circumstances these work refusal provisions as well for reasons outside of or very peripherally related to the purposes of the act.

The reason the business community is concerned about this expansion is that it sees little benefit to the individual worker by the expansion and it sees an opportunity for further and increased abuse of the sections. I am going to explain why I think they feel that way. It is not because they do not believe in health and safety; it is because when somebody abuses a provision or a right which has an impact on somebody else, it brings those provisions of the legislation into disrespect. It ostracizes the business community in this circumstance from what is legislation it should be very supportive of, and it does not see its rights being recognized in this balancing process. That is why when these proposals were put forward there was such an outcry, because they saw little benefit in health and safety improvement from the work refusal provisions.

1020

Let's just for a moment think about the section where the certified worker is going to be able to refuse or shut down work. There are various conditions upon which that is going to occur. Basically there has to be some kind of immediate danger in order for the certified worker to do that.

Right now, employee representatives and employer representatives on health and safety committees advise workers with respect to whether or not they think there exists danger in the workplace or in their job function. That worker, based on that advice, is in the best position to judge whether or not his particular work function is going to create a danger or risk to himself. He can accept that advice or he can reject it, based on his much greater knowledge of his job function.

You walk into a plant with 1,000 employees and I will tell you there are very few employees in that place who have a good understanding of everybody's job. They have a very good understanding of their own job and they understand the health and safety risks of that job, but they cannot walk across the plant and necessarily

assess those health and safety risks for another employee.

What you have here is a situation under the act where you have the power of a certified worker, against the will of the individual worker who is not interested in the stop-work—if he was, he has the right now to do so, but you have the certified worker in a position to be able to simply say, “No, I am going to close this place down; it is unsafe,” despite the fact that the worker doing the job does not think that. I suggest to you that it is almost absurd to suggest that if a person is advised by a health and safety representative that he is in imminent danger as a result of his work and that he has a right to refuse to do the work, he is not going to exercise that right, unless he disagrees with the certified worker’s assessment of his job and what he is doing.

I see no benefit associated with these changes in terms of eliminating what would be hazardous circumstances. There is no empirical evidence to suggest that it is the lack of strength in the work refusal provisions of the act that is somehow causing the accidents in this province. So I think what we have here is that without any empirical evidence, we have a change to the act that is only going to allow for further abuse. It means that the employee representatives no longer have to gain the support of the individual worker who is doing the job in order to shut down a workplace. They do not need that any more. Right now they do need that; they need the people doing the job saying: “Yes, you are right. This is unsafe.” They will not need that any more.

As a result, you open up the act and you open up this right to further abuse. That is just simply the case, and I do not think we should be fooling ourselves about that. Unless we see some benefit in doing that, then it is not something that ought to be done. I have yet to hear anybody suggest or demonstrate some empirical evidence to suggest that in fact it will. I have heard a lot of people say it will, but I have not seen the demonstration.

If you want to see what kind of abuse there has been, all you need do is look at the inspector’s visits to plants under the work refusal sections and see how many times those inspectors conclude there is no danger. You can look at the section 24 applications in front of the Ontario Labour Relations Board which deal with employers penalizing for work refusal provisions and see how few of those applications are made, which suggests employers are not attempting to discourage employees from utilizing the work refusal sections.

There are very few of those applications, and when they do come forward, the vast majority conclude that indeed the people were not penalized for the exercise of their rights under the act. So the evidence is not there to suggest that our existing work refusal sections somehow are not effective. So let’s not change the game in such a way that you are going to bring them into greater disrepute. That is not in anybody’s interest, because it is going to bring the parties apart.

I think the second thing that we need to talk about in terms of the work refusal sections is the work activity inclusion and the simple fact that these inspectors who might come in now are not in a position to judge the ergonomic impact of a work activity. Indeed, right now I have a case involving an ergonomic issue and we are going to end up with experts on both sides interpreting various things. It takes more time and has to be assessed in the context of something broader than an immediate work refusal.

So, first of all, we support the minister’s suggestion that that provision will be amended to make it relate to immediate danger. We also support the minister’s suggestion that if you are going to put these work refusal sections in the act, that at least you require both the employer and the employee certified worker to agree that the work is dangerous. That will at least provide a certain balance and eliminate potential abuse, although, quite frankly, we do not see that a certified worker needs to be provided that work refusal right to begin with. They have an advisory role.

A certified worker may in fact improve—maybe it will improve the training. The certified worker concept may in fact improve health and safety in the province because you will have a person who is better advised of matters. We do not necessarily object to that. It is a question of what powers and what role you give them, which is where we have problems.

Expansion of health and safety committee: This is, quite frankly, simply a practical suggestion. We have had sort of an across-the-board increase, saying, “Okay, we want to increase it to four.” Well, there are many effective committees that are working at two, and they are full-time members. I believe you may hear submissions from GM, which has an effective health and safety program that has a full-time member in each plant from management and a full-time member in each plant from the employees.

Why when you have got full-time membership as opposed to part-time, you should necessarily

increase the size of this committee is—I think is too broad a brush. Right now the minister, under the act, has the discretion to dictate the size of committees. I happen to know that he has exercised that discretion and has dictated to various organizations where an inspection has demonstrated a need that they should be increased.

I suggest that is a more flexible approach and a better approach to deal with specific circumstances than what is in the act or what is in the bill. In any event, at least I think some recognition should be given for the fact that you may have full-time members, and in that circumstance the increase may not be necessary.

1030

Medical surveillance program: This is again a very significant issue for an employer. There are greater and greater worker compensation obligations which we have just gone through in terms of Bill 162. There are greater and greater obligations being imposed on employers to ensure that their workers are healthy and safe.

There is nothing wrong with those greater obligations being imposed, but you cannot at the same time take away a tool to utilize to ensure that you can meet your responsibilities to do everything reasonable for the health and safety of a worker. If you are working in an environment where there are noxious gases as a result of the process, then it is in the employee's interests to go through an appropriate medical surveillance program and it is essential that the employer have access to that information.

Again, this is a balancing process that we are dealing with. Yes, you must recognize the rights of employees with respect to privacy, but when you get into a workplace environment and you impose obligations on employers to ensure that they are keeping employees safe, then you must give them the tools to do that. Instead we are seeing them taken away, and the chamber strongly objects to that.

The last thing we would like to just mention is an omission from Bill 208, and I think it is a significant omission in the context of the increased fines. There is a Court of Appeal case that says the present provisions of the Occupational Health and Safety Act are unconstitutional when it comes to what defences are available under that act for employers or employees who are charged under it.

The Court of Appeal for Ontario has said that for charges under this act it is essential that the defence of due diligence be available for all such charges. That is not the way the act presently

reads, and subsection 37(2) needs to be amended to conform with what the Court of Appeal has indicated, which it did three years ago.

If we are going to increase fines and impose liabilities on other people pursuant to this act, let's make sure that the courts understand, and the lower courts understand, what the change is and what defences are available, because otherwise you are going to cause a lot of unnecessary litigation, and I do not think any of us want that. In fact, we are trying to eliminate unnecessary litigation in this province, I thought, right now.

In any event, I think those are generally our submissions, and we would be happy to entertain questions.

The Chair: Thank you, Mr Kenny. A number of members have indicated an interest. Just before we start, in subsection 37(2) it does say that "it shall be a defence for the accused to prove that every precaution reasonable in the circumstances was taken."

Mr Kenny: Yes, if I could just explain that, I will put my legal hat on for a minute. First, that section only deals with certain of the charging provisions under the act. The Court of Appeal said that it must apply to all. Second, it only covers one aspect of the due diligence defence, all reasonable precautions. The other side of the due diligence defence or the option with respect to it is mistaken fact, and the Court of Appeal has said that the full due diligence defence should be available. That, frankly, is all that needs to be changed. It just says for charges under this act it is a defence for the employer or the employee or the supervisor to demonstrate due diligence. That is all that needs to be done, but it should be done; otherwise, there will be confusion in the lower courts.

The Chair: Thank you. Mr Mackenzie, we do not have much time, but five minutes.

Mr Mackenzie: The one thing that comes through in your presentation is that obviously the workers cannot be trusted with some of the additional protection that they are given in this bill. I would simply like to ask you how you respond to 285 deaths last year, 1,820 injuries every single day, the ministry's own studies that show 78 per cent of our workplaces are in violation of the act or regulations?

Another piece was just in Monday's Hamilton Spectator: The number of violations of Ontario's Occupational Health and Safety Act recognized by the provincial Ministry of Labour in 1988 was 65,711 and the number of prosecutions by the Ministry of Labour for violations was 564.

Mr Kenny: How do I respond to that?

Mr Mackenzie: How do you respond to that and—

Mr Kenny: I—

Mr Mackenzie: Just a moment until I finish. Tell me, of those 1,800 workers a day, of those 285 deaths, of these 78 per cent of the workplaces that are in violation and so on, when it comes to the deaths and injuries, how many chamber types or how many managers or how many owners are among those dead and injured?

Mr Kenny: I will tell you, first of all, that the Ontario Chamber of Commerce is as concerned about those statistics as anybody and employers are—

Mr Mackenzie: But you are not suffering, are you?

Mr Kenny: Just a minute, please.

Mr Mackenzie: You are not suffering.

Mr Kenny: I disagree that we are not suffering, but in any event, those are the problems—

Mr Mackenzie: You are not dying.

Mr Kenny: But I will tell you, this bill will do nothing to change those statistics in terms of the work refusal sections, and that is what we are talking about here. We are talking about Bill 208. This bill, the chamber feels, will do nothing to improve those statistics.

Mr Mackenzie: Do you know that Rio Algom, Denison Mines and Inco did not agree with you on that position when you said there is no empirical evidence? Their evidence was clear before us that the worker representative in those plants was working and had led to a much safer operation.

Mr Kenny: I am sorry. I agree with that and the chamber agrees that worker reps have done that. We agree with the internal responsibility system. I did not mean to suggest that—

Mr Mackenzie: They also have the right to refuse.

Mr Kenny: Yes, and we are not suggesting that should be changed. We are not suggesting that the existing work refusal section should be changed. We are suggesting that the addition is not going to be of any assistance.

Mr Mackenzie: I suggest to you that the workers who are working in the workplaces are the ones who are most likely to know whether the job they are doing is safe or unsafe. They obviously do not agree with the presentation you have made and the reason for it is, as they clearly

indicate and have to us overwhelmingly, that the internal responsibility system is not working.

It is a question, I agree with you, of power in the workplace. But if you do not give them the power and the authority in terms of their personal health and safety—and they are the ones who are paying the price—then we are not going to have a successful attack on what literally still is carnage in the workplace in Ontario.

Mr Kenny: With respect, the chamber feels that in fact the existing work refusal sections do provide the individual worker the right he needs to refuse work. What this Bill 208 does in its present form is take that away from the individual worker and put it in the hands of somebody else.

Mr Mackenzie: It is not working currently.

Mr Carrothers: I wonder if I could just pick up on your last comment because I think the intent of this legislation, at least in my understanding, is that it is building on that right to refuse work, not taking away, and putting in place the committees, the certified workers, a body of people who focus on safety in the workplace, and also with the stop-work right perhaps putting some extra powers to look at maybe two or three individual jobs when working together to create a safe situation that is not perhaps immediately evident to the person individually.

I guess I would like to know if that is not the way to strengthen this, as I think we are all agreed we want to improve the situation in our workplaces, how would you see strengthening the legislation?

Mr Kenny: First of all, I would suggest that there must be a greater focus on the regulations. There needed to be changes to health and safety regulations five years ago with respect to the electrical provisions, and those changes have not yet been forthcoming. See, this act is a very general document and in order to give it meat, it is the regulations which give it the meat. It is on that area that the chamber feels the government should be focusing in terms of changes.

Second, we see that this agency may in fact be a useful tool in terms of improving the training. What you need in this province if you are going to improve health and safety is you must improve awareness of the individual worker, of the small businesses or the large businesses that are not paying enough attention to health and safety. It is the training aspect that is essential to improve health and safety here. It is not a change to the existing work refusal provisions, but it is training, and hopefully this agency will focus on that kind of thing.

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The Chair: We have time for one supplementary.

Mr Dietsch: I am curious. Many of the presenters who have been before us indicating evidence have explained to this committee—and that comes from many employers and many unions as well—that in their opinion there has not been an abuse of the current system. I am curious as to how you respond to that kind of an analogy, especially when it is coming from both sides.

Mr Kenny: I can tell you that the experience of the chamber is somewhat different from that. There may be specific circumstances or specific employers where they have not experienced abuse, but I think if you analyse the statistics concerning the work refusal provisions and the number of inspections having to be done as a result of those, and the number of times inspectors have actually found no danger as a result of such, you will find there have been many circumstances in which the section has been used.

I come from a somewhat unique perspective, and it may be a somewhat cynical one, in that I am a labour lawyer and I act on behalf of management. One of the areas I specialize in is in health and safety. I get calls on a weekly basis from employers who are dealing with situations where workers are not refusing pursuant to valid reasons under the act, so I speak from personal experience on this, not just a general knowledge. I see it on a weekly basis.

Mr Dietsch: I wonder if you could lay before the committee some of those particular cases.

Mr Kenny: I do not think that is really quite fair to my clients.

The Chair: Mr Kenny, I am sorry. I wish we had more time for an exchange, but we do have a rule that it is 30 minutes for each presenter.

Mr Kenny: Fair enough.

Mrs Matthews: Could I make one suggestion, Mr Chairman, in response to the gentleman's question?

The Chair: One final comment.

Mrs Matthews: If it would be useful to the committee, perhaps the chamber could put together some case examples of where work refusal has caused—and we would be pleased to do that.

The Chair: Thank you, Mrs Matthews and Mr Kenny, for your presentation. We do start the clause-by-clause part of the bill next week, so if

you were to forward anything to us, it would be appreciated if you did that quickly.

The next presentation is from the Oakville and District Labour Council. It is good to see a former Sudbury resident, Larry Bishop, with you this morning. I hope he does not prejudice your case. We do welcome you to the committee and we look forward to your presentation. The next 30 minutes are yours. If you would introduce yourselves, we could proceed.

OAKVILLE AND DISTRICT LABOUR COUNCIL

Mr Tremblay: My name is David Tremblay. I am here with Larry Bishop, John Novak and Leah Castleman. On behalf of the Oakville and District Labour Council, I would like to thank the resources development committee for allowing us standing.

The Oakville and District Labour Council is made up of affiliate unions in Oakville, Burlington, Milton and Mississauga. These affiliate unions represent workers in both the public sector and industry, with a total membership of approximately 10,000. Our affiliates are not only concerned about the economic wellbeing, but also the quality of life of their members and families.

It is because of this concern for the health and safety of our affiliate members that we are appearing before you today.

Some of our affiliates, such as ambulance workers, have been before this committee to discuss issues pertaining to lack of health and safety for their members and the patients they are responsible for. You have also heard from workers in correctional services who discussed the lack of proper training and violations of the government's own regulations in dealing with transporting inmates. They have spoken to you of overcrowding in institutions, causing extreme stress and real health and safety concerns for these workers, other inmates, and of risk to the public.

The Ontario government, which is the employer and regulator of health and safety in these workplaces, shows a serious lack of regard for these regulations and the health and safety of its own employees. Bill 208 does not give these workers or firefighters and police the right to protect themselves with the right to refuse unsafe work and severely limits the rights of others in the health care field.

The right to refuse unsafe work would be unnecessary if employers were really responsible for the health and safety of their employees.

However, the reported death in 1989 of 289 workers and 250,000 workplace accidents indicates seriously inadequate protection for working people in Ontario. The Oakville and District Labour Council has prepared this brief to show the committee what we consider to be shortcomings of the act as it stands, and of Bill 208 to amend the act.

Management certified member reversing stop-work order: This does not make sense to our affiliates. What does make sense is an agreement between the labour and management certified members, or the inspector must be called in before a stop-work order is cancelled.

Workers affected by either a right to refuse or a stop-work order, either by a certified member or an inspector, are not paid: At a local assembly plant where workers refused unsafe work, even though this was upheld by the ministry, it still resulted in approximately 3,000 workers losing earnings, some in excess of a full shift. The present government's proposed amendments suggest this injustice is acceptable and guarantees workers more of the same.

Reprisals against workers: Currently, if an employer takes a reprisal against a worker or violates section 24 of the act, there is never a prosecution of employers for said violation. It seems the government is reluctant to apply the provisions of the legislation which contain the right to prosecute employers. Bill 208 ought to address that reality.

Labour and management members of joint committees should come from the workplace: There is a requirement under Bill 208 that labour members of a joint committee must come from the workplace, but no similar requirement for management members. We feel that the selection of labour and management members should be the same.

Workers select their certified member: This is an issue considered high on any priority list for working people—the right of workers to select who will represent them as a certified member. Bill 208 should be amended to reflect this clearly.

Workers' technical advisers should be allowed full access to the workplace: When a dispute arises regarding the health and safety of workers, the Oakville and District Labour Council feels that technical advisers for the workers should be allowed full access to the workplace and not have to seek permission of the employer. It is the worker's health that is at stake and full access for specialists and technology in toxic substances must be provided.

Assignment to a refused job: The right of an employer to assign another worker to a refused job must be corrected. Presently, the employer must inform the next worker that there has been a previous refusal and then the second worker must make his decision whether he will also refuse or take that work assignment. Unfortunately, this present legislation does not account for the intimidation that may be felt by a probationary employee and in fact has resulted in at least one workplace fatality already.

Bill 208 should be amended to stop the disputed job until it is resolved. The right of the employer to shop his workforce for a willing or sufficiently intimidated worker negates the purpose and the effect of the right to refuse.

Investigation of all workers' complaints: Bill 208 states that a certified member may investigate a worker's complaint. If internal responsibility is to work there must be a mechanism for complaints to be investigated. If there is not a requirement on the certified worker to investigate all complaints, then it is left to the worker's discretion and the worker can also be subjected to intimidation by the employer, refusing to let the certified member do the job. An amendment should be made to Bill 208 that would enable a worker certified member to investigate all complaints.

Certified members should have the right to issue provisional improvement orders, which must be acted on or appealed to the inspector: The Oakville and District Labour Council recognizes the need to give certified members the right to issue provisional improvement orders. This right provides an opportunity for a prompt resolve to hazards which do not require that work be stopped. The employer would then be required to respond to the order by correcting a hazard or calling the inspector. We feel this type of an amendment would eliminate lingering hazards that eventually cause injury.

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Eliminate lengthy prosecution procedures: Should the inspector discover a violation of the Occupational Health and Safety Act or regulations, the current cumbersome procedure and shortage of inspectors results in only orders being issued. If inspectors have the ability to issue an on-the-site citation, appealable to the courts, the labour council believes minor infractions will be corrected more quickly and prosecution would only be required for major infractions.

The labour council does have concerns about many areas of the act as it stands, and Bill 208 to amend the act. We have determined that with the

revisions requested we have some chance to improve the present inadequate record for health and safety in this province. We also feel the revisions are only reasonable, considering the risk that is taken by our members every day in an attempt to earn a living in Ontario.

I would be happy to answer any questions you have.

The Chair: Thank you, Mr Tremblay. You covered a lot of the major areas in a very short length of time. We appreciate that.

Mr Carrothers: I appreciate your coming in today. I want to ask you questions on a couple of points you have raised. The reprisals against workers area was one, on page 3. Bill 208 does something that I think is pretty important. It now makes the senior management and board of directors responsible for health and safety in the workplace, which perhaps makes the key players in an organization now personally responsible.

When I saw that, I thought it was more or less responding to the kind of thinking you are putting forth on this page in that they are responsible. They are going to be brought in. They have to personally take time to pay attention to health in workplace situations. When we have had companies come before us that have good safety records, it seems the one element that is common among them is that the president and chief executive take it very seriously and that whole seriousness then permeates right down to the bottom of the structure. I guess the question I have is, do you not think that is sufficient to deal with what I think you are getting at on page 3.

Mr Tremblay: No, unfortunately, I really do not think it is sufficient to deal with what we are talking about here, because we find that if you are dealing with the senior members of management, they are pretty well insulated from any kind of prosecution. It is a long time before anything happens. There has to be something that is more immediate that is going to deal with the situation where there is a violation of section 24 of the act.

Mr Carrothers: I guess what we seem to have seen happen is that sometimes the supervisor becomes the meat in the sandwich, and they are the ones who get charged when it may not be completely their responsibility. This now allows that charge to go right up to the top, to the board of directors.

Mr Tremblay: But if nobody is going to prosecute, if nobody is going to proceed with the prosecution because of the amount of time it takes to do it and we do not have enough

inspectors to do it, then it is going to be a matter that the prosecution just will not proceed.

Mr Carrothers: The other point I wanted to touch on was the firefighters and policemen, because I want to get your thinking. Almost by definition, I guess, the workplace of a firefighter, as an example, is an unsafe workplace. They are being put into a situation that is dangerous. The tire fire in Hagersville is an example. I guess that is reason there are exemptions around here. It is hard to deal with that right in a workplace which inherently is unsafe. If we were to bring this legislation to bear on those workers and give them rights, how would you draw the line? There must have to be a line drawn here, some definition, a different kind of definition at least, of the rights within the workplace. I am wondering if you could give us some help on how that might be worked out.

Mr Tremblay: I have with me some other people on this committee. Leah Castleman is someone who represents workers who are excluded from the right to refuse. I would like to let her have the opportunity to respond to that.

Ms Castleman: Policemen and firemen are excluded, as well as correctional officers, under the act. I am a correctional officer at Syl Apps Youth Centre in Oakville. One of the problems you have is that there is not adequate training or there is not adequate equipment. We have ambulance services that can refuse, but not if there is imminent danger. Now the problem is that if they know the plane they are going up in is in lousy condition, they still cannot refuse, so they end up dying and the public they are transporting ends up dying.

If the firefighters did not have adequate equipment or knew there were problems in that tire fire in Hagersville, but they were still ordered to go in, they could not refuse. There have to be limits there where the members are trained. If the chief of the fire department is trained, that is nice—he is probably not on the scene anyway in Hagersville—but it is a matter of making sure the adequate training is there and the equipment is there. If you do not have something to fight for that, then it is just a matter of the employer saying, "Maybe we will give it to you, maybe we won't," and you have to go in anyway.

Mr Carrothers: Perhaps coming at it from the side of making sure the equipment is in good shape would be the way to solve it. Given the specific examples you are talking about, would that be a way to solve the problem?

Ms Castleman: There have to be some teeth there to force them to do that. Otherwise the

employer will go, "I don't have the money to do that." There have to be some teeth in the legislation to force them, to make sure the equipment is there, the training is there and they are not going into an unsafe situation.

Mr Carrothers: I guess you run into a problem. We had an example given to us at one of our hearings where the ambulance went out and had bald tires and actually got pulled over and was in violation of the motor vehicles act. It seems that what happened was there was a conundrum therefore presented to the police officer. Does he stop the ambulance from completing its call in going to help someone who is obviously in need of help, or does he let it go on and try to get it fixed afterwards? It appears they did not issue the citation; they got it fixed afterwards.

I guess it is an example of the problem. You have an emergency. You have to deal with it. You have to deal with whatever you have to deal with at that moment. Maybe the better way to handle it is to make sure, as you say, that the teeth are there, that the equipment does not get in the state where it has the bald tires in the first place, so that you do not face the situation.

Ms Castleman: In that situation those workers were asking the employer to get new tires and they were going, "The Ministry of Health, you know, will not give us the money," and that kind of thing.

Mr Carrothers: It was surprising. You had a vehicle that obviously was now in conflict and not conforming to other legislation, let alone what might be prudently safe; it had bald tires.

Ms Castleman: You do not have the teeth there to force them to do that; that is the problem.

Mr Wiseman: I would like to question you on page 3, the first paragraph, where you mention that an employee did stop work and the ministry did uphold that, and 3,000 people in the example you gave were not paid.

I asked in Ottawa and we have heard this morning—perhaps some of you gentlemen and ladies were there when they said that some of the stop-work orders were not upheld. We heard that in committee room 1 by, I believe it was, the auto parts people. They had three or four cases in the last while where it was not upheld. I think there were 13 of them—they described them as the spokes of a wheel—and the people that buy the parts from them are trying to reduce that to 10. They do not have inventories as I have in the shoe business, but rather are working a two-hour turnaround time.

Someone who stops an assembly line like that for a reason and it is found he was at fault, that it was not a health problem or something that would cause an injury—I asked in Ottawa, I believe it was, would the people, the unions agree that a slap on the wrist for that person in having him or her decertified was serious enough when, in this case, if that had not been a legitimate shutdown, it could have caused their fellow employees, 3,000 employees, a days' work.

I feel as a small employer that it is not enough just to decertify the person who made that unjustified complaint, but rather that he should do, as a businessman in Ottawa said—he gave them two chances to do things right and the third time they stayed at home. Do you think it is fair to come in and ask us to put in there that employers pay those 3,000 people, in one case, when that was in the reverse, that all the person knows he is going to get is a slap on the wrist and be decertified?

Mr Tremblay: First of all, dealing with the first part, I will give you a little background surrounding this. This is a situation that happened in my own workplace and what happened here was that a piece of equipment that had been continuously causing problems and unsafe situations for the workers who worked in that particular area had a failing again and it was a matter of imminent danger. When the inspector came in, the inspector ruled that, yes, there was a case for imminent danger and that it was a justified refusal.

Following that, he said that he could not rule himself on the full aspect of the operation, that they needed an engineer to give further specified advice. When the engineer came in—in his position, it was an engineer for the ministry—he ruled that the operation was in his mind not likely to endanger. The worker still refused to go to work. Following that, there was an appeal by the union members and the appeal was won in that the engineer did not take everything into account. But those workers still were not paid for that refusal, which was a legitimate work refusal and there was imminent danger there. There were people who could have been killed at that point.

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Mr Wiseman: I really do not think you are answering my question. You gave that example in here, where it was legitimate and everything, but what I am asking you is, do you think that if you are asking your employer to pay 3,000 people for a day's work if there is a legitimate refusal, then if it is not a legitimate refusal—I should have mentioned further what this chap

said, that if they do not get their production out in about two hours to whomever orders it, they will get it from someone else and it amounts to many billions of dollars and means jobs to some of the fellow workers if it is done and not justified—if it is fair on one side, why is it not fair on the other?

Mr Tremblay: I have a nudge here from Mr Bishop who would like to respond.

Mr Bishop: I think there is a short answer to that and I am going to be brief. We heard some of the opinions from the group that preceded us. Labour's position in no uncertain terms is that it is better to err on the side of workers, rather than maim them or kill them or endanger them in any way, than to err on the side of profits, and that is the simple answer. I may be oversimplifying it, but that is our position.

Mr Wiseman: So you want it one way but not the other.

Mr Bishop: We want to stop the carnage in the workplace, Mr Wiseman. It is that simple and the system in place now has not done that.

Mr Wiseman: I think everybody wants to do that, but I think you have to play on a little more level ballfield.

Mr Mackenzie: I have just one brief question. I cannot help but refer to the 3,000 workers people keep mentioning. As I recall it, there were better than 600 orders in that particular plant that had not been complied with, and I wonder at what stage you decide you are going to close an operation down that is unsafe.

You heard some of the previous testimony before this committee. I was going to read a few of the sections; I do not think it is necessary. Essentially what it is that workers are going to misuse the additional authority that they get if they have the right to refuse, if certified trained reps have the right to refuse or shut down an operation they consider unsafe.

I simply would like to get your response to the literal charge of irresponsibility on the part of workers today. I should also point out that while we have had in very recent days a few examples, very few I might say, where employers were using the argument we had today in more strength from the chamber about using the right to refuse for purposes other than health and safety, in fact the testimony, including from business groups, has been overwhelming, I think, in saying that there has not been a deliberate use of the refusal right since we had the new legislation come in in 1978-79. I would like to get your response to the charge that workers are going to act irresponsibly.

Mr Tremblay: There again I guess the best way for me to respond to your question would be to answer about my own experience from my own workplace. I work for a large assembly plant where we have three full-time union, elected by the members, people who are dealing full-time with health and safety. We started with one and we gradually had to add to three because of the amount of concern our members had for their own health and safety. Those workers are paid for out of the wage settlement we negotiated. That just shows the responsibility working people have to their own health and safety.

Those workers also have a charged responsibility on behalf of the union, and it is fully understood that if they feel there is a situation where the act is being misused by our own members or there is an intention to misuse it by our own members, they are immediately to get involved and to defuse the situation, and they have done that on several occasions.

We do not have a problem with frivolous work refusals. We have a situation where our members only refuse when it is a matter of imminent danger. We are very concerned about it and we are very serious about it, because we all recognize also the cost to our own employment if things are frivolous or misused.

We feel also that there are a great number of employers that do not have that situation and a lot of workers who do not have the situation to have that kind of representation. That is why we are asking for these amendments to Bill 208 and that is why we are suggesting that we need this kind of protection for working people.

Mr Wiseman: As president of the labour council, would it be your assessment that that same responsibility applies to most of the other unions and workplaces regardless of size?

Mr Tremblay: Certainly. They have to have that responsibility.

Mr Dietsch: I was interested in pursuing some thoughts with regard to penalties. Many individuals who have come before us from business have indicated that they felt that there should have been stronger penalties with regard to employees, I guess, who they claim frivolously shut down workplaces. In relation to that, you on the other hand are suggesting that we have stronger penalties on management's table in respect of work stoppages.

Based on the fact that fines have been increased which sends a signal to the court system, if you will, that there is a more serious question in relation to the amounts of fines, and also the point that Mr Carrothers made about

directors having some hands-on approach in dealing with the policies for health and safety. I would like to know where you feel that the balance can be reached.

Mr Bishop: I think the statistics that were in the Hamilton Spectator yesterday clearly show that the amount of prosecutions versus charges laid are simply out of proportion, that is, on employers for violation of the act. I think when we see statistics like this and we see that, although the act provides now for upwards of \$50,000, the average fine levied is something around \$2,400, which is just a slap on the wrist—as far as the prosecutions are concerned, there are not enough of them in our estimation.

Mr Dietsch: As I understand it, there has been a dramatic increase in overall fines since this government has taken place with respect to the amount of money collected. Now I realize what you are saying about the average and, of course, averages are always interesting facts because you deal with up and down, and should penalties be levied for what infractions and how much should they be levied for what infraction, but I just think it is interesting to note, trying to share that conundrum that the committee finds itself in to find that middle ground.

Mr Bishop: Again now, with respect, Mr Dietsch, while the fines may have gone up since this government has been in place, the workplace deaths and accidents have not gone down, and that is our concern.

Mr Dietsch: Ours too.

Mr Bishop: That is where we are coming from, and it seems to me that with all the concerns the chambers and the employer groups have brought before this committee in regard to how this act will add to their costs, maybe that is the message they understand and maybe the fines ought to be evenly enforced—the ones that are in place—never mind being increased.

Mr Dietsch: The other point I want to touch on is with respect to job refusals. You mention in your brief the fact that you feel that job startups on refusals should be done jointly. Recognizing that—and I believe you were in the room when the earlier presenters made their point about their fear of a certified worker shutting down a workplace when even the worker who is on the worksite does not want to shut the particular job down—and recognizing that the whole spirit of the act is done through stronger joint co-operation and joint participation from management and workers—and I think that many support that view—I have asked the question of other

unions that have indicated to me that, “Yes, if we have a joint responsibility for startup during a work refusal”—and I do not see a great deal of time in between—“is it fair to expect that we should have a joint consultation for a shutdown in the first place?” I would like to ask you your viewpoint in that respect.

Mr Tremblay: No, because if that were the case, I do not think that we can enter into a situation where we have a joint responsibility for shutdown. We have found through our own experience in the past that management has always had someone assigned to a health and safety responsibility and that person’s position has always been the same. In every case, their position has always been to keep the operation running or that that is not economically feasible to make the improvement at that time. Unfortunately, in a lot of cases, it has taken a work refusal before the situation was actually ever corrected and then corrected very promptly.

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Mr Dietsch: But let’s not rule out the fact that the individual worker has the right to refuse that job in any event. I guess what we are talking about is the additions to those kinds of things, where it seems that in the view that they put forward, and the same view that you put forward, that if it is a joint startup process, why can it not be a joint shutdown process?

Mr Tremblay: Because basically it has to be the decision of the worker or the worker representative in order to deal with it. As I have said to you before and was also mentioned in the brief, it makes representation to the fact of where a worker was killed who was the second worker who went back on a job. I believe that you were here probably when that brief was read off to you—I think it was in St Catharines. There was a representation made by a union there or by a labour council, where there was a new hire who was killed who was the second one placed on the job. Now there is a person who made a decision to go to work.

Mr Dietsch: My understanding of that particular work refusal was that there was the individual who participated. I guess you are talking about the death in Gerber, are you?

Mr Tremblay: Yes.

Mr Dietsch: We are getting some research from the research officer in that respect, but my understanding was that the individual who claimed to refuse that particular job, in the inquest that went on it turned out that he did not talk to anybody. He was not asked to do the job

and refused to do the job, but he was not asked and he did not tell anybody about a work refusal.

There is some cloud, if you will, over the fact of a work refusal in that particular case, but I was interested in your view because other unions have shared, "Well, it seems reasonable to expect that if we have a joint startup and individuals do have the right to refuse in any event, why can we not have a joint shutdown?" That may eliminate a lot, but I see you differ.

Mr Tremblay: I do not agree with you.

Mr Dietsch: I understand that. Thank you.

The Chair: Mr Novak, Mr Tremblay, Mr Bishop, Ms Castleman, we thank you for your presentation and for your exchange with members of the committee.

The next presentation is from the Retail Council of Canada. Gentlemen, we welcome you to the committee. I think you know the ground rules, that 30 minutes are yours and you can use that all for your presentation or you can save some time for an exchange with members of the committee. We welcome you to the committee. If you will introduce yourselves, we can proceed.

RETAIL COUNCIL OF CANADA

Mr Woolford: Thank you. My name is Peter Woolford, I am vice-president with Retail Council of Canada. With me are Don Mitchell, who is the director of occupational health and safety for the Oshawa Group Ltd and David Crisp, who is vice-president for human resources for the Hudson's Bay retail group.

I have invited these two gentlemen to join me this morning because, unlike us association types, they are real people. They deal every day with employee relations issues and particularly with health and safety matters. I thought it would be helpful to the committee to have a couple of people here who are in the front lines in terms of working on health and safety.

I would like to just take a couple of words to introduce our association to you and then run fairly quickly through the points of interest to us in the legislation. Council speaks on behalf of some 6,000 retail firms across Canada and we represent about 70 per cent of retail store volume of sales. So we do speak very substantially on behalf of the retail trade. We cover both the food and the general merchandise sides. Don, with the Oshawa Group, has of course both food and general merchandise interests. David, with the Hudson's Bay retail group, is primarily on the merchandise side.

As a first point, I do want to emphasize that we believe there is no monopoly on caring. There is

no one right position on this. This is not simply a workers' issue. The matter of health and safety is of concern to employers and to employees. Retailers are active and committed to improving conditions in their trade and in other workplaces around the province.

A major vehicle for this is the Ontario Retail Accident Prevention Association. I have with me this morning, in the person of Mr Mitchell, the current chairman of that organization. The Retail Council of Canada has worked closely with them in recent years to foster the interests of health and safety in Ontario, and we believe that they are doing some good work with respect to education, training and researching some of the key health and safety issues in the retail area.

Right from the beginning I would note, for example, that this association would welcome the participation of employees in the work of that association. I have just a few general comments because we want to make it clear where we are coming from when we make our remarks with respect to Bill 208. Our work with the Ontario Retail Accident Prevention Association and with our member firms has convinced us of the number of centrally important principles that lie behind good safety work. The first one probably is co-operation between the workplace parties.

We believe that safety is a common, shared goal. It is not something that you have differences of views about. It is not something you negotiate. It is not something that is adversarial. Health and safety is too important to be a subject over which you fight. It is a common, shared goal and it is important that the legislation and the procedures reflect that and encourage it.

Second, we have a strong belief that one of the best ways to pursue this is through education, training, motivation and awareness for both management and labour. Again, it is a matter of getting people turned on to safety rather than forcing them into it or arguing about how it is done.

The final point is communication back and forth, and here again it is the same story, getting the workplace parties together, getting them to co-operate, getting them to share their views, and through that, through discussion, through joint examination of issues and problems in the workplace, you can come to a reasonable understanding of what should be done.

We support much of what is in Bill 208 because it promotes these principles. Mr Sorbara and now Mr Phillips both have made it clear that these are principles lying behind the bill and we support them. Co-operation, communication,

sharing responsibility, education: those are key words. I will keep repeating those because they lie behind some of our concerns with the bill.

The public debate has focused very much on two key aspects of the bill. First is the provision to give certified representatives the power to stop work, and second is the role and structure of the Workplace Health and Safety Agency. I would like to take a couple of minutes just to run through each of these. Again, what I am going to try to do is show why our concerns in this area really relate back to what the philosophy of the bill is and the right way to do health and safety in a modern, industrialized, technically complex environment like Ontario.

We are concerned that the stop-work proposal does give certified health and safety representatives an unnecessary unilateral power to stop work which is counterproductive to the cause of health and safety. Giving unilateral power to the parties is contrary to the recognized way of doing health and safety. If you talk to the experts, they will tell you, again as we have said, it is co-operation, it is communication.

If you look at the internal responsibility system which has been set up and accepted by management and labour in Ontario, the focus is on talking first, getting your understandings and then acting. Stop-work changes that around; it has it backwards. You act and then you argue about why you acted or how you acted. That is the wrong way to do health and safety work.

There appears to be the notion in the stop-work power that safety is achieved only over the resistance of employers, that the best way to accomplish it is through adversarial relations. We do not believe that is true and we believe that professionals again would tell you that is a tragically wrong way to go about health and safety. It is not a policing issue; it is a co-operation and education issue.

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More generally, we doubt whether the power is workable, necessary or fair, and this is important because the power is a very important one itself. It can deprive other employees of their wages, it can deprive the firm of income and activity and can damage the competitiveness of the workplace.

Another point is that the workplaces are now technologically complex. Even in a relatively straightforward business like retailing, there are technological and professional, scientific issues which take some time to understand and come to grips with. We are very supportive of joint health and safety committees and we are very support-

ive of having certified workers, but we believe that health and safety in the workplace must be carried out in co-operation and in communication, not unilaterally by one party or the other.

With respect to the issue of giving the power to an employee representative and concern about frivolous or other stoppages through lack of knowledge or information, we would simply note that that can be a concern. The Swedish legislation, which is often referred to, has an interesting feature which some proponents of stop-work in this province do not always recognize, and that is that the Swedish legislation does permit a firm to sue a worker if there has been an unnecessary work stoppage. That is a very, very substantial deterrent in that jurisdiction.

Finally, just very quickly, the minister when he proposed some amendments at second reading referred to what he called a "poor performer" category. We feel this is just not workable. We do not know how you could define poor performers. We are concerned that the conditions vary so widely from one industry sector to another, from one firm to another, from one part of a firm's activities to another that whatever criteria you develop to define poor performers are going to be very judgemental. As well, there has been no sign of how a firm would cease being a poor performer, and there is a concern that over time you would get an ever-increasing number of companies defined as poor performers.

Let me turn for a minute now to the question of the agency. We support the changes that the minister proposed at second reading. A neutral chairman and the addition of four professionals to that agency are positive steps in the right direction. Again, what do they do? They bring professionalism, they bring a responsible approach to the issues of health and safety, and we feel that is the right way to go. Safety is a professional, technical occupation. It is not something that you argue about in a partisan way. It is something where you try to get at the right answers, and we feel that the kinds of changes the minister is proposing in the agency will direct it even further in that direction.

Like other employer organizations, we are opposed to employee representatives on the agency all being drawn from organized labour. Coming from the retail sector, we believe that effectively disfranchises the vast majority of our employees and we think that is wrong. Many of our employees have made it clear over the years that they do not wish to be represented by unions, and under this current proposal, they will be

represented on the health and safety agency only by union representatives.

Second, it is a problem for smaller businesses, many of whom, both employers and employees, see organized labour either simply as irrelevant or alien to the culture that they have or are trying to foster.

Finally, we are concerned about the powers of the agency. We believe it should be very active and responsible with respect to setting standards, to training and certification and to providing strategic direction for the associations, but the day-to-day work should be done by the associations and be directed by their joint management and labour boards. That is where you will find the people who really know what the issues are of health and safety in that industry, who are knowledgeable about conditions and can really focus in on how to operate.

As I said earlier, we welcome the participation of employees on the boards of safety associations. We think that is a positive step. It is important in the retail trade that the employee representatives include nonunion employees because they are predominant in our industry. We are also appreciative of the changes that will allow for a longer time to shift over the structure of the boards. That will allow us some flexibility and make the process somewhat smoother.

I would like to speak very briefly about the right to refuse. We recognize the legitimate concerns about unsafe work activity and we support the extension of the right to refuse into this area. The one caveat that we would note is that it is important again to set professionally developed standards for work activity, so that you have a sound basis for making decisions in this area and it is not open to argument. Bring the parties together, find out what the best professional practice is and agree on it.

Finally, a couple of comments on the details of the legislation. Search and seizure powers: We believe there should be some route for quick appeal so that a firm can get back things or papers that have been seized by an inspector if those are needed for it to continue its operations. The bill does mandate medical surveillance programs, and yet it appears that the requirement for workers to undergo medical tests where prescribed is to be eliminated. That just strikes us as being inconsistent. If you are going to encourage medical surveillance programs, and we support that, then the firm also has to have some means of finding out the information that it needs in order to operate those programs.

As you can see, there is a lot in the legislation that the retail council supports. We believe the broad philosophy lying behind the bill is correct and we speak in favour of many of the specific proposals. Where we have differences, it is because the proposals are not in keeping with the approach of the bill. It is unfortunate indeed that these are the issues around which the debate has focused. Bill 208, without the stop-work power, with some recognition of the two thirds of the Ontario workforce that is not unionized and with a few other relatively minor changes, would be a piece of legislation that would serve the health and safety needs of employees and employers in Ontario very well.

Thank you very much. I would like to take a moment to see if either of my colleagues has anything he would like to add to that general overview of our position.

Mr Mitchell: I would like to speak on behalf of the Ontario Retail Accident Prevention Association. In the last little while we have been extremely active in doing a lot of things that maybe you might not be aware of, and a lot of it is being pushed by the employer community. We have a major study. I guess all of you have heard that at one point in time we have had some problems with checkout stands, the ergonomics and the design. We have a major project under way which is known internationally and is about to conclude in the early spring. What we are doing is a major study in Ontario alone on checkout stands. We have been looking at future designs. We have been looking at past problems. We have been doing that in conjunction with the Centre for Applied Health and Research at the University of Waterloo. We are very proud of the work we are doing.

We are doing many other different pieces of work that maybe do not get to the forefront. We had to basically redevelop our whole workplace hazardous materials information system strategy, because much of the WHMIS legislation, as you are probably well aware, excluded retail, but because we are responsible employers we went out and designed retail packages that are explicit to our industry. So retail is not sitting back. We are very active in the occupational health and safety field.

Mr Crisp: I might just emphasize what Peter has already said; consultation and involvement is really the theme for us. The Hudson's Bay Co has about 60,000 employees across the country, which sounds like a lot, but you have to understand that is in 500 locations and almost all of those locations are very small employers.

They are individual units where it is very difficult to get staff involved in the health and safety approach.

For instance, we have had health and safety committees, even though we were not required to, over the last 10 or 12 years, because that is a mechanism for involving employees. Consequently, some of the pieces of the legislation simply reinforce for us things that we already believe in and are already doing.

What you have to look at when you look at our type of retail is that those small employers have a tremendous employee turnover rate. We are, we hope, an employer of choice for people who are looking for short-term employment and temporary work. Many of our employees are only with us between three months and a year or a year and a half. They are not in a position to become highly trained, highly qualified safety specialists on their own, but we think it is important that they participate, that they be involved in the committees.

If you simply put an enormous amount of power in a single, apparently trained safety representative on the floor, there is a real tendency for all the other employees to simply say: "I don't need to be involved in this. I have a rep who is going to take care of me." That goes exactly counter to what we are trying to achieve in the workplace.

I think that in terms of how we look at the legislation, it is exactly as Peter has said. We are looking for mechanisms that will build consultation and involvement of all the rank and file employees. The existing individual right to refuse is a better route in our opinion than the right to refuse that is proposed in the amendments to the bill.

1130

The Chair: Thank you, gentlemen. Mr Fleet has a question.

Mr Fleet: I want to touch on a couple of issues you brought up in your brief that we have heard from various business groups from time to time, but that have not been discussed in the questioning very often, and that deals with the search and seizure powers and also the question of medical surveillance.

I quite agree with your position on the medical surveillance. There does seem to be an inconsistency. If employers are responsible for the health of workers in the workplace, they have the overall responsibility to make sure the workplace is a safe place to work in, and particularly when one of the key issues now involves things like contact with substances and chemicals—not

necessarily in your area, but certainly in a lot of workplaces and possibly even in connection with your operations—it seems to me that it is rather illogical that a worker would be free to deny access to medical records that are essential in order to make any kind of evaluation as to a long-term impact on individual workers.

I would hope perhaps—I know there are some labour people who are monitoring us—that will be addressed, because for the life of me I do not understand that. Certainly, because there is a requirement that medical records and what not would be in accordance with the regulations, it safeguards against an inappropriate action by an employer. I take your comments there very seriously. I think they were well put.

Perhaps I just do not understand the point about search and seizure powers. Under the current act an inspector can already come in and take out documents, take them back to the office, photostat them and give them back to you. They can go in and take your audits or whatever. They can take anything: a memorandum that says, "Gee, we have a dangerous situation here." That kind of memorandum they can already go and get copies of.

Given that is what they can already do, and given that the existing provision is clearly designed to deal with evidence for a trial so that you can have a successful prosecution, I really do not understand what the concern is. I presume this is not your intent, but it is almost like telling us you just do not want to be prosecuted, even if you find something wrong.

I think all of the members of the committee would take the position that there ought to be prosecutions where the evidence is there and that we ought not to be prevented from succeeding in a prosecution just because we cannot hang on to the evidence, even when we have it in our hands at least at one point in the investigation. That, to me, is where I understand those provisions of the bill come from. If you have some different understanding or there is some problem I have not addressed in my comments, I would really like you to address that.

Mr Woolford: Let me take them in order. On the first question on surveillance, yes, we are very much interested in seeing those two aspects of the legislation brought together, as you have said. Let me add a couple of other features of that issue for the help of the committee.

Repetitive strain injuries from putting things over a scanner or from standing in the same position twisting all day long are looked at essentially as industrial diseases in some jurisdic-

tions, and that may indeed be the case soon here in Ontario. What you want, as an employer, to be able to do is to monitor what are the physical problems your employees are having so you can correct them. That is exactly what the cashier workstation study is looking at, what the Ontario Retail Accident Prevention Association is doing right now. What they need is the medical information to design the right kind of workstation that is much more user-friendly and much more ergonomically soundly designed than today's.

The other side of this is that, again through the Ontario Retail Accident Prevention Association, food retailers have been very active at promoting early return to work of employees who have been injured on the job. There again, what you need to be able to do is work with the employee and his or her doctor in order to design a program of work that is suitable for the employee, that gets them back early, that gets them back with their colleagues, reinforces their sense of personal worth, their commitment to the job, and reintegrates them back into the workplace in as friendly a way as you can. That again requires a measure of information about the employee's physical condition so you can design the job properly.

On the search and seizure side, our concern simply is that if there are papers the firm needs back to operate, at least it is able to get Xeroxes or copies so that it can continue its operations. We simply want to be able to continue operations where material has been seized. They should be able to at least present their case somewhere to ask that certain things or materials be returned to them so that they can continue their operations. That is the major concern there.

Mr Fleet: I would like to ask a supplementary based on the comments that were made, and particularly dealing with the problems of design of the workplace, that kind of situation. There is a debate that has gone on within the committee about the right to refuse for work activity and the concept of immediate danger, and certainly I have been questioning quite regularly on this particular aspect.

I am wondering, if we do not have in the bill a right to refuse work for repetitive strain injuries per se, if we do not have it expressly written in in that way, it would seem to me that it might be useful if we had something that would require some kind of notice that once an employer is given notice of a problem, at a certain point in time it will either have corrected it or have satisfied the worker somehow.

I can see the illogic, the inappropriateness of an immediate stop-work on something that just takes time to redesign. Would you be in support of some kind of provision that at some point in the future, whether it is months or whatever, there be some kind of time requirement so that an employer has to respond to design problems?

Mr Mitchell: In many of our cases now we are already using the current right to refuse for ergonomic situations. If a person—let's take, for instance, in a food warehouse—particularly decides to refuse a work activity because he feels that the selecting of a certain piece of product is unsafe to him, we respond to that now. Future design problems and existing design problems: A lot of that now is in the technology of ergonomics. We are using computer modelling and we can fairly quickly do an analysis of a situation to get some idea of how safe it is and how safe it is not: lifting situations, moving material from point A to point B.

That is the technology we are trying to incorporate into the Ontario Retail Accident Prevention Association and get out to our members. So the right to refuse now, if there were some things added to it, would probably suffice. The problem we get into with the broad term "work activity" is—I would hazard a guess that probably none of us in this room could come to grips on defining a "work activity." We would probably all have a different interpretation.

If you are going to put "work activity" in and change it to just simply read "a right to refuse a work activity," then we better have some prescriptions or some way of defining what "work activity" is. Part of the problem with the existing legislation is that we worked very hard at putting a good piece of legal work together. It was introduced, but it has never been followed up.

You can read through the green book and see countless number of times "whereas prescribed," and when you go back to the regulations and you look for those prescriptions, they are not there. Basically what happens is that we are in a very grey world. We have the inspector with his interpretation, labour with its interpretation and the employment community with its.

The Chair: I am sorry to break in, but we are running rapidly out of time and we have only one questioner. Mr Wildman, did you wish to—

Mr Wildman: I have a matter I wanted to raise. I am intrigued by your comments regarding the inappropriateness of one party having the unilateral right to shut down. I am sure you would agree with me that management already

has the unilateral right to shut down, so are you prepared to give that up?

Mr Woolford: In our business I would suggest to you that we do not have the unilateral right to shut down. We must serve our customers.

Mr Wildman: But if there were an unsafe condition in one of your—

Mr Woolford: Just a second. We are really driven by the market.

Mr Wildman: If there were an unsafe condition in one of your stores, unsafe for your employees and the public, you have the unilateral right to shut down that store until that problem is resolved.

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Mr Woolford: But I think, again, good safety practice would tell you that one of the very first things you should be doing is consulting with your employees, finding out what the situation is, and taking the necessary steps immediately. You talk. The internal responsibility system—

Mr Wildman: Are you telling me you would consult if you were informed by the fire department—

Mr Woolford: If the building is on fire you evacuate it, of course.

Mr Wildman: Of course, so you already do have the unilateral right to shut down.

Mr Woolford: As indeed does the employee have the unilateral right to refuse work.

Mr Wildman: Yes, but you then have the right to ask another employee to fulfil that task.

Mr Woolford: And that employee also has the right to refuse.

Mr Wildman: Oh, certainly, but then it could go on for ever, could it not? The other matter I would like to raise is your comments with regard to representation. How many directors does the Ontario Retail Accident Prevention Association have?

Mr Mitchell: How many directors does it have? The directors that it has currently are 12.

Mr Wildman: How many of those are labour?

Mr Mitchell: Actually, there are none who are labour and the reason for that is that on many occasions—if you are willing, Mr Wildman, to have a look at this, we can show you the letters that have been sent out to the labour community that we deal with, the United Food and Commercial Workers' Union and that. We can also show you their return or their reply, where they do not want to join us.

Mr Wildman: I was leading up to to discussion, though, about your comments about nonunion and your concern about representation of nonunion. It seems to me that you are concerned about disfranchising someone who is not already enfranchised. If you are so concerned about representation of nonunion employees, why have you not voluntarily appointed nonunion employees to the Ontario Retail Accident Prevention Association?

Mr Mitchell: Basically, it is up to the company to send its representative, but much of the work we have been doing has been done in conjunction with nonunion representatives in subcommittees and work groups and things along that line.

Mr Wildman: Finally, if you were to appoint nonunion or unorganized workers to the agency, how would they be chosen and whom would they represent? To whom would they be accountable?

Mr Mitchell: Currently, the way it is now with our nonunion operations is that they are elected by the constituency they represent. In other words, if we take a retail store and they are sitting on a safety committee for that retail store, they are elected, as it says in the act. What could very well happen—for various different groups, whether it be a general merchandise group or a food group—is that they could be elected either through election by chain or election by retail association or a work group, like that. They can be responsible back to that group.

Mr Wildman: But you have chosen not to follow that route with regard to the Ontario Retail Accident Prevention Association because you have no labour people, even no nonunion people, on that agency.

Mr Woolford: Could I just make one more point on that? We have developed with the Bill 208 Business Coalition a proposal for representation on the agency that would see the neutral chairman and the two vice-chairmen of that committee at least review the proposed nonunion representatives, so that at least the organized labour representatives could be assured that these were not simply people put up purely by the management side, that there would be some credibility to those individuals.

The Chair: Thank you. I can see Mr Wiseman out of the corner of my eye. We really are out of time, if you can be very brief, Mr Wiseman.

Mr Wiseman: I will be very brief. I am very interested in what Mr Mitchell has said about the study being done in Guelph. Will we be the first

to have completed something like that and how close to completion is that study?

Mr Mitchell: We are expecting the initial draft probably at the end of the month or the beginning of March. What has happened is that the United States is very much after the technology we are developing and we get invited quite regularly so they can snap on to it. There were some initial studies done in British Columbia, so it is not the first study, but what happened was there was not a lot of material developed out of it and it was felt that some of the material was not scientific enough. This will probably be the leading study, in the last five years anyhow.

Mr Wiseman: Does our Retail Council of Canada pay for the cost of this as good employers?

Mr Mitchell: Actually, what happened was that it is a joint project. The project had money put up by the Occupational Health and Safety Education Authority, six major food chains, and through a co-grant with the university research incentive fund.

The Chair: Mr Woolford, Mr Mitchell and Mr Crisp, we thank you for your presentation.

The next presentation, and the final one for the morning, is from Ontario Hydro, Ontario's favourite crown corporation. Gentlemen, we have 30 minutes for your presentation. If you will introduce yourselves we can get right to it.

ONTARIO HYDRO

Mr Popple: My name is Bob Popple. I am director of the health and safety division of Ontario Hydro. On my right is one of our technical supervisors in the programming department, André Gauthier, who is one of our resident experts on legislation and in the area of labour legislation, and on my left is the manager of the programming department, Jim Doyle, who is responsible for the development of policy, programs and assessment of health and safety effectiveness in Ontario Hydro.

I have a brief statement to make that is an update of a submission we made last year. It should not take me 30 minutes, but I would like to make it—do people have copies?—and then use the balance of our time for discussion or questions, if that is fine with the chairman.

On 24 January 1989, Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act received first reading. Shortly thereafter, Ontario Hydro submitted in-depth comments and concerns on the proposed amendments to the Ministry of Labour. One of the most significant concerns

was the authority given to certified representatives to stop or start work. We felt that if a workplace was unsafe the employee already had the right to refuse work and that provision alone was sufficient.

Since that time, and in light of the second reading of Bill 208, we, through discussions with our Ontario Hydro employees' union, CUPE Local 1000 representatives, have re-evaluated this specific section of the proposed amendments. The purpose of this presentation is to brief the committee on the outcome of those discussions so that you are aware of where we are going with the stop-work issue in Ontario Hydro.

When Bill 70, An Act respecting the Occupational Health and Safety of Workers, was first introduced in the 1970s one of the major concerns that many employers had was the right to refuse unsafe work. All kinds of assumptions were made by the doomsayers that all work would stop and the province's production would suffer. History has shown that this simply has not happened. We have had some work refusals at Ontario Hydro for activities that were unsafe, and in most of those situations the employees were right. Major work stoppages, however, never materialized.

Ever since the introduction of the Occupational Health and Safety Act in the late 1970s and its promulgation on 1 October 1979, we have supported the forward progress of occupational health and safety. In fact, we established more than 150 joint health and safety committees across the corporation before the law was enacted. We have always felt that involving employees and employers in a joint partnership on health and safety will yield a safer workplace.

As you are aware, under the Occupational Health and Safety Act, the use of joint health and safety committees is part of the legislative process which has been labelled the internal responsibility system. Within this participative management concept, the joint health and safety committees have been given specific rights and responsibilities under the act, such that with their involvement, the right to know, the right to participate and the right to refuse unsafe work are further enhanced.

In the late 1970s we were experiencing up to five fatalities per year across the corporation. However, this was reduced to zero fatalities for the years 1985, 1986 and 1987. We regard this as a significant achievement, but it will only remain significant if it is sustained.

In more recent years, although we regard our performance as good, we have been reassessing our achievement in the mid-1980s and conclude that our safety record, in so far as fatalities go and safety culture goes, is fragile, and that we need to take steps to strengthen our safety culture right down through the organization.

Within the last 18 months we have had three fatalities. This is totally unacceptable. There is a need to turn around the present direction of occupational health and safety in our company. Strengthening the internal responsibility system can contribute to this endeavour. A need to have more effective participative management on health and safety issues in the workplace will be one thrust in our company in the 1990s.

We know that our safety culture must change and that there must be a greater degree of trust between employees and employers if we are to attain sustained excellence in this vital area. The fundamental partnership between management and workers must be promoted in order to achieve this.

The entire world is changing. One only needs to look at the changes taking place in Europe to see that people expect to have a greater say in what affects them.

We have looked at the stop-work provisions of the proposed act and recognize the need to promote a stronger proactive approach towards health and safety. In our efforts to improve the safety culture within the corporation, several initiatives have been undertaken and several more are planned in the next years.

For example, in 1988 a joint policy committee on health and safety was established. This is a senior level committee with representation from the Society of Ontario Hydro Professional and Administrative Employees, CUPE Local 1000 and Ontario Hydro's senior management. This committee has recently agreed to proactive steps which will enhance participative management in health and safety, specifically, the right to stop unsafe work.

In brief, we have agreed on the following four principles:

1. Where a workplace is judged unsafe, a certified union and management member of the local joint health and safety committee can jointly prevent the start of the work or stop the work.

2. Where there is a disagreement between the certified union or certified management member of the local joint health and safety committee that the workplace is unsafe, the issue shall be

immediately presented to the local joint health and safety committee for review and resolution.

3. Where an employee's health and safety is in immediate danger, a certified union or management member of the local joint health and safety committee can stop the work. After calling the work stoppage, the certified union or management member must contact the respective counterpart immediately and seek to obtain joint agreement on the stoppage as soon as possible. If joint agreement cannot be reached, the issue shall be presented to the local joint health and safety committee for review and resolution.

4. In cases where the joint health and safety committee cannot resolve issues arising from the second and third points above, the Ministry of Labour inspector or the Atomic Energy Control Board, as may be applicable to our nuclear stations, shall be called in for resolution.

At this stage only principles have been agreed on, and in the next few months we will be shaping these principles into a corporate policy. There are additional sections to this agreement that deal with the principles of training, certification, decertification and assessment. If needed, I can elaborate on those later.

However, the most important principle is the agreement of shared responsibility and accountability by the union and management for the actions taken by their respective certified members. This demonstration and commitment of trust by both parties will become the cornerstone of our joint partnership in the stop-work area.

This is a new beginning in this area and we at Ontario Hydro are looking forward to working with our employees and their representative bodies in a joint effort to be a corporation of sustained excellence in the health and safety area in the 1990s.

Strengthening of the Occupational Health and Safety Act is needed if Ontario is to be a safe place to work on a consistent basis across the province. Management and union representatives may not agree on all provisions of Bill 208. However, we know that the status quo is unacceptable in some areas. We believe we must move ahead through effective, honest collaboration on the issues that affect the health or safety of employees, regardless of what other differences with labour we may have.

To this end, we are starting to install a safety culture with the underlying philosophy that all accidents are preventable; all exposures are controllable; safety is a part of every job, and every employee has specific safety responsibilities.

For that to be consistently carried out across the diversity of work and workplace situations that we have at Ontario Hydro will require a determined effort by every manager, supervisor and worker we employ.

A joint partnership with the Ontario Hydro employees' union, CUPE Local 1000, to achieve that is needed in our judgement. Placing a high profile on health and safety and joint participation can only lead to a better and safer workplace, a more clearly directed workforce with a clearer, more focused vision of what we are trying to achieve and how each employee can participate in that achievement.

That concludes our prepared remarks. We are prepared to discuss or elaborate on any of the areas as the committee members may wish.

Mr Mackenzie: I must say, and I will not reveal where, but when I got a call this morning that we should listen carefully to the Hydro brief, that we might have a few surprises in it, I honestly did not really believe it. A couple of the things you have mentioned here were alluded to in the phone call I received.

I know you are saying in principle, that you have established only the principles so far, but certainly I think you are taking the first, as far as I am concerned, really progressive management look at the situation. You have not ruled out the individual. As a matter of fact, that is clear. Although your first approach is a joint refusal ability, you certainly—I know you did not intend it—sort of shoot down the arguments we heard from the Ontario Chamber of Commerce this morning about irresponsibility and misuse.

I must say that I want to see the completion of your agreement, but it is a pleasant, positive approach considering some of the presentations that have been made to this committee. I think your position that it has to be a joint partnership and the responsibility has to be there is exactly what most of the organized workers in the province have been arguing for.

Until I see the finalization of it, I guess I do not really have any questions, but I just wanted to go on record as being more than pleasantly surprised. You have taken a major step, I think, in telling this committee that we simply have to look at alternatives and that we have to look at the responsibility and that we have look at the rights of workers. I hope the message you have given us here does get through to all members of this committee.

Mr Popple: I was not in the Legislature this morning to hear what was said.

Mr Mackenzie: Quite frankly, I almost dismissed the call I got, but they went into some detail then.

Mr Wildman: It was a Hydro leak.

Mr Mackenzie: That is why I had to be back here for your presentation.

Mr Popple: I can assure you that, as I said, these are principles at the moment we have agreed with CUPE Local 1000 and we will be developing them into a policy that will be used and endorsed at the corporate level. The policy will go beyond the four basic principles relating to the authority to stop work, dealing with training and certification and the various other things I mentioned. I can assure you that those wheels will be turning towards developing that and putting it into place.

Then there will be the phase of developing the training for the certified management and worker representatives across our joint health and safety committees. I said there were over 150. In fact, it is about 170 committees. Then there is the process of getting those people actually trained and certified. So we are looking at a fair amount of work to actually get this in place, but we felt it was important that we come and tell the committee that we have made this agreement, internally, because it goes somewhat beyond what our initial brief was at the beginning of 1988.

Mr Mackenzie: It may complement as well a slightly different approach but an approach that has resulted in significant lower accident rates in the mines, where they have also made one of the few breakthroughs in the province in terms of their representatives and the rights they have in that situation. I would hope we might see a little more progressive thinking on this.

Mr Dietsch: I too would like to compliment you on what I view as a strengthening of joint partnership and really what Bill 208 is all about. In relationship to your comments, you mention that you looked at the stop-work provisions proposed within the act and therefore sat down and worked out that kind of policy or one comparable to that kind of policy for your particular workplace. There is evidence, I guess, that you are looking at completing the principle. I would like to ask you when you expect to have the principle further defined in relationship to what you have laid on the table here before us.

Mr Popple: Some time later this year, certainly in the next two or three months, we will have a draft of a more detailed version that we will be putting forward for consideration.

Mr Dietsch: The strengthening and the stop-work provision is in essence looked at in joint partnership—

Mr Popple: Yes.

Mr Dietsch: —in the very early stages and joint discussion at the workshop floor. Is the certified worker you make reference to one that is in place now? Is that one you are proposing proper training for to come into place?

Mr Popple: No. That is what I was referring to in response to Mr Mackenzie's comment. We have a lot of work to do to develop the training programs that we believe will be suitable for a person to be certified. Local 1000 has started to do some work, from its point of view, as to what it believes should be in there in terms of certification material, but there again the certification program and the process for certification will be something we will jointly agree to with the union. We have some work to do to create that program before we can actually put it in place. We do not have it to date.

Mr Dietsch: The joint health and safety committees will be 50 per cent management and 50 per cent workers?

Mr Popple: They are. The 170 across the company are in the various geographical locations across the province. We are at the moment in the process of doing an assessment of the effectiveness of those joint health and safety committees and we believe we can see, coming from the assessment, a number of ways their effectiveness could also be improved.

The Chair: I can tell by the response of the members that we appreciate your presentation. As a democratic socialist, I will resist the temptation to use your model as reason for the need for more crown corporations in the province, but I do want to express my appreciation for your presentation this morning.

Interjection.

The Chair: Order, Mr Wiseman. That completes our work for this morning. We shall commence again in this same room at two o'clock when the Canadian Auto Workers will be before us. The committee is adjourned, and just in time.

The committee recessed at 1204.

AFTERNOON SITTING

The committee resumed at 1403.

The Chair: The standing committee on resources development will come to order. We are continuing our perusal of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

We are towards the end of the process of the public hearings. We are here in Toronto the rest of this week and we are in Thunder Bay and Dryden next week. Then we begin the clause-by-clause debate that will determine to what extent the committee amends the bill, if indeed it decides to amend the bill. That is where we are at in the process. This afternoon we have a full schedule. I see a hand. Mr Wiseman?

Mr Wiseman: On a point of personal privilege, Mr Chairman: Yesterday in Kingston, the members of the opposition put forth a motion that was defeated by the government members. In hearing three or four papers pick up reports and interviews with the minister, where he was quoted as saying certain things in the paper, we asked yesterday, as you know, and it was voted down by the government members, that we bring the minister before us for the time remaining that we are hearing briefs, so he would have a chance to explain to us what he seemed to be saying in the different press around the province.

I did not say anything when I saw the government members with briefing books all through this whole episode when we were not given them, a government that is supposed to be saying it is open and fair and it wants everybody to be treated equally and the whole bit, even though we know as members that that is just hearsay and talk and really nothing is done about it. But today at noon when I was walking back and found that the members were having lunch, some of them if not all of them with the minister, and that a car was picking them up down here, probably a government car, to take them down to have lunch with the minister—that is probably why some of them are not back yet—I felt quite hurt, because I did say to some of the people yesterday that I would even be prepared to sit over lunch and talk to the minister.

But for a government that is supposed to be open and wants everybody to be treated fairly, I—

The Chair: I wonder if I could intervene for a moment. I am sorry to interrupt you, but if we are going to continue to debate it, first of all, that is not technically a point of privilege, but if you

wanted to put some kind of motion before the committee, we would know what we were debating. At the present time we are not debating anything.

Mr Wiseman: I will abide by your decision, but I really think my privileges have been abused. But I would put a motion that we set aside 15 minutes so that the government members and maybe the parliamentary assistant give us an update on what the minister saw fit to call them in for and talk to them about today, so we as opposition members have a chance to know what did go on and what he did say, so that we have a chance to know for the balance of our hearings, and any of the people who are here know what the minister is telling them are his thoughts at the present time.

The Chair: Okay, I appreciate you putting that in the form of a motion, Mr Wiseman. If I could paraphrase it, you are saying that you want to move a motion that would ask some Liberal member to summarize the discussions with the Minister of Labour (Mr Phillips) today at noon.

Mr Wiseman: Around this bill.

The Chair: Yes.

Mr Dietsch: Could we discuss that at the end of today's meeting?

The Chair: We will consider that as a legitimate motion, and I would ask if there is permission of the committee to restrict it to one speaker for each caucus. I would appreciate that, because we do have a full agenda of presentations this afternoon.

Mr Dietsch: Could I have the motion in writing, please? I believe by the standing orders I should receive the motion in writing and I would like to know exactly what—as I understand, the member just wants me to explain what we were discussing at noon. It does not require a motion. I am quite willing to address—

Mr Wiseman: I would really prefer to have the minister come before us, but as I understand the rules, having voted against it yesterday we cannot bring it back in that way. But I do feel that the government owes us an explanation of what went on and why we were not included and why you voted against it yesterday and it was all right for you to have lunch with him today.

Mr Riddell: The sandwiches were lousy.

The Chair: Okay. I understand, Mr Wiseman, if—

Mr Riddell: The coffee was not very good either.

The Chair: Order, please. If the government members acceded to your request and gave us a short presentation, would that be satisfactory at this point?

Mr Wiseman: It would with me.

The Chair: Mr Dietsch, what is your decision?

Mr Dietsch: I would say that rather than hold the delegation here, Mr Chairman, I am quite willing to give Mr Wiseman an explanation of what we were doing at the end of today's proceedings. That is perfectly all right with me.

The Chair: Okay. Mr Wildman.

Mr Wildman: On behalf of our caucus and as the person who moved the motion yesterday, I would like to say that we would much prefer to have the minister appear before the committee to make clear to the committee exactly what the government intends to do in terms of amendments to gut the bill. If the members here supporting the government are prepared to give us a briefing this afternoon, it would be better than nothing, I suppose, but it seems to me if the minister was available to meet with government members at noon today he could have found appropriate time in his schedule, and I am sure the committee could have found it in our schedule, to appear before us. I hope that the parliamentary assistant, in briefing the committee, will at that time table the amendments the government intends to put to this bill.

The Chair: The only matter in dispute at this point is whether you do it now or whether you do it at the end of the day.

1410

Mr Wiseman: I think for the benefit of the presenters and perhaps for the benefit of some of their unions or some of the people who are going to make presentations the rest of this week and next week, to know what the minister has in mind would be helpful. At the end of the day some of them will be gone and they will not have the benefit of that. I feel it is better at the beginning than at the end.

The Chair: Do you wish to respond to that, Mr Dietsch?

Mr Dietsch: I thought it was Mr Wiseman who wanted the explanation.

Mr Wiseman: I want it as well, but I think the people should know the games that are being played.

Mr Dietsch: No problem.

The Chair: Are we in agreement then that we will take a few moments now and Mr Dietsch will update the committee on the discussions over the noon hour? Is that agreeable?

Mr Dietsch: Quite frankly, as I understand the concerns, first of all, Mr Wiseman makes reference to briefing books. I want to make it perfectly clear that briefing books were distributed, as was all the other information, during the first day of hearings. I do not know whether Mr Wiseman was present during the first day of hearings or not, but certainly whoever was the member from his particular caucus was here, and I noted that they were given out on that particular day with all the other information with respect to the minister's presentations, Mr Millard's presentations and Dr Shulman's presentations, which were all duly recorded in Hansard.

Second to that, Mr Wiseman is quite right. We met today in a caucus, as happens from time to time in their particular party and happens in the New Democratic Party, and certainly I have no difficulties in explaining the fact that we meet as a caucus from time to time to discuss a number of issues. I would be quite willing, I guess, to let Mr Wiseman come into our caucus, providing it is a reciprocal move, of course, and I can go into his caucus and listen to what he says, all the nice things he says about me.

None the less—

Mr Wiseman: Can we ask him—

Mr Wildman: We make sure he is never mentioned in our caucus.

The Chair: Order, please. You did ask Mr Dietsch.

Mr Dietsch: —I think in relationship—and I am trying to comply as best I can, as I always do—it is fair to note that there have been some viewpoints that have been expressed with regard to amendments. I spoke yesterday with regard to the amendments, and my understanding is that the minister and the ministry are in the process of doing some advance work, but there are no amendments at this point. I spoke yesterday in relationship to the fact that it would be usurping the committee process, in my opinion, to have individuals who are presenting before us, comparable to the individuals who are presenting right now—

[Interruption]

Mr Dietsch: I have no intention of trying to speak over the chanting. We are in the committee process, and you know the rules of the House as well as I do. That is my explanation. Thank you.

The Chair: It would appear that we are about to have some interested people join us, so when that calms down we will proceed, we will continue with the hearings.

[Interruption]

The Chair: Order, please. We do welcome you all here this afternoon. We have a full afternoon of presentations and we are encouraged by the interest that has been shown on this bill as we travel across the province. We are as a committee an extension of the Legislature and there are certain rules that we simply must follow and do follow. We have had co-operation from people in the audience all across the province. I ask that you respect that in this room this afternoon as well.

We know that there are very differently held opinions on the value of this bill, but at the same time the people who hold those differing opinions have a right to be heard before this committee. I would ask that if people are making a presentation, the contents of which you disagree with very strongly, that you at least respect the right of those people to make their views known and to present them to this committee of the Legislature. We have a full afternoon of hearings, so I urge that we get on with it immediately. We are already late starting.

The first presentation of the afternoon is from the Canadian Auto Workers. I ask the gentlemen at the table to proceed. We have 30 minutes for each presentation and you can use the full 30 minutes to make the presentation or you can save some of the 30 minutes for an exchange with members of the committee. It is entirely up to you, but we will not go beyond the 30 minutes. I ask that you introduce yourselves and we can proceed. The next 30 minutes are yours.

CANADIAN AUTO WORKERS,
LOCALS 112 AND 1967
ONTARIO WORKERS HEALTH CENTRE
CANADIAN UNION OF PUBLIC
EMPLOYEES, LOCAL 1344

Mr De Carlo: My name is Nick De Carlo. I am the president of CAW Local 1967. I would like to introduce the other people at the table with me. We thought that we had brought out quite a few different people to our presentation, but obviously we have not matched the Steelworkers. I am glad to see that we are all here together.

At the table with me is Jerry Dias, who is president of Local 112 at de Havilland. At the far right is Stan Gray, the director of the Ontario

Workers Health Centre and on my left is Gerry McDonnell, who is with Local 1344 of CUPE.

We are each going to have a few things to say. Jerry will start out and then we will go from there.

Mr Dias: As Nick said, my name is Jerry Dias. I represent workers at de Havilland Aircraft, Spar Aerospace, Woodbridge Foam Corp and several other units, as we are an amalgamated local union. We have had quite a bit of experience in the whole field of occupational health and safety and I guess a lot of it stems from the mass work refusals at de Havilland Aircraft back in 1986. What I would like to do first is talk about the work refusals in 1986, what led to those work refusals and how, if Bill 208 had been in place in 1986, the results would have been much different.

[Interruption]

Mr Dias: Am I talking to anybody here or what? Good stuff.

In 1986, we had medical surveillance done on many of our members at de Havilland Aircraft in the paint shop, the heat-treat department and the upholstery shop and the plastic shop. What we found was that out of the first 81 people tested, 56 people were suffering from some sort of occupational disease. We had people who were suffering from severe dermatitis, people who had pigmentation loss, people who had cardiovascular difficulties.

The more important and I guess the culminating incident that led to the major health and safety revolt at de Havilland was that we had some people who were suffering from temporary vision loss. What happened was that the corporation, Boeing, at that time decided to use some of our members as human guinea-pigs and in turn, as I stated, a probationary employee performed the function where others had refused. He performed that function because of the right the employer has under the law today. He has the right to give work to another employee when somebody is technically on a work refusal.

1420

Obviously an employee who is a probationary employee is not going to stay with his brother or sister who has refused and continues to refuse to perform the job function. As I said, as a result of that person performing that task, he had a temporary vision loss.

The employer and the Workers' Compensation Board failed to recognize that there were any sort of occupational problems at de Havilland at that time. As a matter of fact, what we had to do

was get the ministry officials involved and force them to lay down the law to enact what I guess would be clause 14(2)(c), which was basically a stop-work order at that time at de Havilland Aircraft, because 14(2)(c) talks about training employees and making employees aware of the hazards they are working with, since the corporation had failed to comply even though the orders were issued four times previously.

The minister at this time stepped in and passed the order. Basically, the employer did not know what to do with the stop-work order. As a matter of fact, when this came down on a Thursday the employer sent home all the employees in the plant. In the entire operation you are looking at over 6,000 employees.

The callous part about what transpired was that the corporation at that time got in touch with Bill Wrye, who was the Minister of Labour at that time. Bill Wrye reversed the ministry inspector's order, the stop-work order, and stated: "Instead of the plant being down and out of production, what we will do is give the corporation until the following Wednesday to issue a schedule of compliance for when it will be able to accommodate the ministry order. We are going to give them until the following Wednesday to issue a schedule of compliance for when they will be able to straighten out the ventilation and train the workers."

To make a long story short, we had a discussion with Bill Wrye on Friday and Bill Wrye's position was very straightforward. It was that it was unreasonable that the government would put a stop-work order law in place and shut down de Havilland Aircraft. Bill Wrye's position to us that day was very straightforward, that it did not make sense to put in place a stop-work order, knowing full well that the employees at de Havilland Aircraft and our union members were being subjected to harmful chemicals and were suffering the physical hazards that go along with this.

As a result of Bill Wrye's actions, the following Monday morning when the employees came to work and found out that their rights had been violated, we had some 600 simultaneous work refusals. At that time, I am sure it was the largest mass work refusal in the province of Ontario. Needless to say, the government was ill-prepared to handle this.

To make a long story short, the union accomplished a lot of the objectives we had put in place. De Havilland had to spend some \$18.2 million on ventilation in the plastic and paint shops. Of course we know that de Havilland just

received \$150 million back from the federal government, a portion of which is to pay for the ventilation.

What I want to do is relate that experience as if Bill 208 had been in place in 1986. First of all, one of the ways that we were able to get the information to bring the workers' concerns to the limelight was the fact that we had medical surveillance on the workers in the plant. We ended up forcing the corporation of course to pay the employees for the time it took to conduct a medical surveillance and we forced the corporation to, today, have medical surveillance done on the company's premises, which I must say is a union clinic. Today we have our members in the plant; they are basically under the isocyanate control program and they are being monitored by doctors who are perceived as credible by the local union.

Bill 208 as it exists today takes away the mandatory provision for medical surveillance and now gives the employer and the employee basically the right to get away from medical surveillance. There is more to it than just the medical surveillance and the system we have in place today. The government is saying that if medical surveillance is going to be made available to the employees, it will be under government-funded clinics. Frankly, one of the members of the board of directors of the government clinic that you wish us to send our members to is Ron Woodard, who is the president of the company, de Havilland Aircraft. For me to entice my members to go to this government-funded clinic, where the president of the corporation sits on the board of directors, is like me sending the chickens to Colonel Sanders for medical surveillance. It does not make a hell of a lot of sense.

Today the person who sits on the board of directors is currently fighting us tooth and nail for every single workers' compensation claim, and the whole issue of occupational exposure is an issue we are certainly a long way from having resolved.

Second, what would Bill 208 have done to the mass work refusals, the 600 that we had in one day? First of all, under Bill 208 there are all kinds of financial penalties involved for the workers. Yes, the worker still has the right to refuse, but under Bill 208 the management conducts the investigation, and after the management conducts the investigation and perceives everything is okay, if the worker still continues to refuse then there is no obligation on the employer to pay.

It took some of our workers up to six weeks of refusing—six weeks of pay I might add—to get the corporation and the government to move. I can tell you today that if these workers did not have the protection of their wages being paid, what turned out to be a six-week work refusal in many of the areas may have turned out to be a six-hour work refusal. I am saying that if the government of this province wishes truly to put some teeth in the Occupational Health and Safety Act, well then it must take a serious look at not penalizing the worker for exercising the right to refuse. I tell you here today that it is absolute nonsense. It is a ploy by the government to stop mass work refusals, and work refusals period.

We talk about the certified worker having the right to shut down an unsafe operation. What also is in this bill is that if the certified worker shuts down an unsafe work machine or an unsafe operation, the workers affected do not get paid. On the one hand it is a very good gesture in the sense that a certified worker is a necessity in nonunion shops—a certified worker is a very effective tool for us as a trade union movement—but to say that an employee does not get paid when this certified worker shuts down the operation is crippling the certified worker. To say that the certified worker can be decertified by an agency that is set up—the bipartisan board chair, I guess, is someone who is appointed by the government—makes absolutely no sense.

As it exists today, we elect our health and safety rep, and if this bill is passed our health and safety rep, the full-time health and safety rep at de Havilland Aircraft, will be our trained person and our certified worker. What you are saying is that the 3,700 workers on the floor who I represent can say, “We want this individual as our full-time health and safety representative,” then somehow a tripartite board can remove that person for life. What does that do to the democracy of the workers who put that person in place in the first instance? It does not make sense.

We have come a long way on health and safety with de Havilland Aircraft, Boeing, Woodbridge Foam Corp, Spar Aerospace and some of the other plants and workers I represent, and I must say we still have a long way to go before the working conditions in those plants are deemed credible by Jerry Dias’s standards, by CAW standards and by the Steelworkers’ standards, but to say somehow that this agency or this board, which is going to have a supposed impartial chair is going to be able to do something that we cannot do in bargaining ourselves, I just do not buy that argument.

1430

I sat here and watched a 20-minute exercise before this thing even started that to me made absolutely no sense. It would have been good to hear the government’s position if it truly already does have its agenda in place on Bill 208, but to see that we could not even get a minor dispute like that resolved by this board and it took 20 minutes before we were given the floor shows to me that a somehow neutral chair appointed by the board is not going to be neutral at all.

The facts are that the Canadian Manufacturers’ Association sent a letter to the Minister of Labour outlining a series of things that the manufacturers’ association needed in Bill 208. It is very safe to say that every single issue that was brought up by the head of the Canadian Manufacturers’ Association was put in place, which tells me that the government’s commitment here today is not for the workers in the province of Ontario, but is to further push the management agenda and the corporate agenda.

Bill Wrye explained his position very carefully to us and to me and to the president of the local at the time, who was John Bettes. He explained what his position was, “Yes, we understand that the workers’ lives are being threatened, but it is also our understanding that it is too serious to shut down the operation.” As the Minister of Labour, he told me what his position was.

What is one of the issues the manufacturers’ association is all up in arms about? It is about the workers, or a certified worker, somehow having the right to shut down an unsafe operation. In this province some 300 workers died last year and not one of them was a management person. How can the management say to us as a trade union movement that giving us the power to unilaterally shut down an operation somehow is unfair? It is the workers who are dying in this province, not the managers. For you to say that a certified worker can be taken away or disbarred, to say that other workers do not get paid if a certified worker shuts down the operation or for the manufacturers’ association to say the certified worker should not have this right in the first place is absolute nonsense.

I just want to close, because there are other speakers here, by saying that Bill 208 needs some major changes. As it sits before this committee today, I see it being the most regressive piece of legislation that has come into place since 1979. I see it crippling the trade union movement in representing its workers. I see it penalizing workers for refusing unsafe work activity. I see it as no more than a ploy by this Liberal

government to circumvent some laws that are in place today and to further push the corporate agenda.

The Chair: Gentlemen, you have about 15 minutes left in your presentation, so you can use that 15 minutes as you see fit.

[Interruption]

The Chair: I thought you wanted to hear the presentation from your friends at the table right now, so why do you not listen to them?

Mr De Carlo: Just to address that point, this is part of our presentation.

I am going to get to a few of the points in the actual brief we have given you, but I want to say a couple of things first. First of all, I am with McDonnell Douglas. It is a company that has about 3,500 people working there. We have a long history of problems and we had a major fight on health and safety a couple of years ago. The key thing of course is that just because we had that fight a couple of years ago and because we got a few problems solved does not mean it is over, because McDonnell Douglas has not changed the type of company it is and we are still fighting for workers' lives today.

You mentioned earlier on that there may be differences over the value of this bill. I submit that the real difference is over the value of a worker's life. That is the real difference we are talking about in how we look at this bill. The debate that is taking place, or the attitude of the government and the attitude of companies, the whole approach that is being taken is, is the dollar more important than the worker's life, or is the worker's life more important than the dollar?

The amendments that were brought in recently on top of the original bill indicate which direction the government is going in and indicate that the government is going in the direction of business. If there was ever any doubt when the bill was first introduced, it has been totally eliminated with the amendments.

It was mentioned about secret meetings; that was brought up at the beginning of the meeting. We cannot relate to you in a brief everything that we experience as workers in the plant and on the shop floor, but we certainly experience a lot of secret meetings going on between the Ministry of Labour and the company. The ministry inspectors come in. They have closed-door meetings with the company. Later on they make decisions. That happens day after day.

The reality is that the right to refuse work or the right of a worker representative to stop production is essential, because we cannot depend on anybody else to protect the worker's

life than the workers themselves. That was assumed when the bill was originally written, when the act that is in place was originally written; otherwise there would be no right to refuse. It had to be assumed, it was assumed and it is a well-accepted fact. It is also one of the key areas that is being attacked in Bill 208 and in the amendments that are being made. Why? We have addressed it briefly in our brief.

First of all, Jerry Dias has talked about the certified worker rep. I think it is very clear that if the workers are not going to be paid or if that health and safety rep can be decertified, the pressure is there that the right to stop production will rarely, if ever, be used. On top of that it also opens the door to games being played by the company and by the ministry, and I will deal with that briefly.

The games that can be played—we know they are played. I mentioned McDonnell Douglas. Jerry has talked about de Havilland. At McDonnell Douglas when we had our work refusals, they happened after eight years of inactivity on the part of the Ministry of Labour: no plant inspection over eight years. A year after the refusals at McDonnell Douglas, when there were found to be all kinds of contraventions of the act, there was no action taken by the ministry.

It was only after we brought in the Ontario Workers Health Centre, after we began to discover some of the problems in the plant, after we began to initiate some education of the workforce, that the ministry came in. They issued orders. They did not follow up on the orders. They issued orders that were general in a lot of areas. When it came down to complaints that were made by the union about those orders, they said, "Well, if the situation is so bad, why aren't the workers refusing?" The workers did refuse. They exercised their right.

When you have a bill that says a certified worker rep who shuts down production can be decertified, he therefore will tend to delay shutting down production. They will call up the ministry and the ministry is going to say, "Have you shut the plant down?" The answer will be, "No." "Then it can't be that serious. We will be around some other time." That is the game that will be played. We know that because we have experienced it. We have experienced the role the ministry plays. So it is absolutely essential that the rights be guaranteed in law, rather than being left up to the action of the ministry along with the companies.

On the individual right to refuse, the issue we faced at McDonnell Douglas when we had our

work refusals was that the company tried to get away without paying the workers during the refusal. There was a lot of pressure and they backed down on it. The role the ministry played was to sit back and say, "It's up to the company and the union. We don't get involved in these things."

The new bill supposedly addresses that problem and it supposedly addresses it because it says that during the investigation stage the worker will be paid. The fact of the matter is the investigation stage is totally controlled by the company. The health and safety rep of the union should have some input into it. The health and safety rep of the union is supposed to be involved in part of it, but it is under the control of the company. Because it is under the control of the company, it can last a day and it can last a week, and it can last a year, depending on what the company chooses; it can last five minutes. That means it is totally at the discretion of the company how long a worker will be paid.

More than that, we have been at a meeting with the ministry in the last few weeks where they have said they will interpret the law to mean that the investigation is over at the point at which the company finishes its investigation. In a case where it is taking air samples, once they have taken those air samples, that is the end of the investigation.

If it has a shortage of work, the company can take an air sample in a work refusal, which may be over exposure to gases or chemicals, and it can wait six weeks or eight weeks or 10 months. If the production is low, the workers are sent home. They will not be paid because the investigation is complete. Then the company has the total upper hand over the worker. What happens is that instead of the workers having the opportunity to fight for their rights, it is turned around into a way to destroy the workers' livelihood.

1440

This bill actually gives the company that power because it says you will be paid only during the investigation stage. It does not say you will be paid during the work refusal. That opens a door.

It is clear from the original bill and the amendments that the goal is not to fundamentally strengthen the workers' position; it is to fundamentally weaken the workers' position. And that is totally unacceptable.

The other key issue in our brief is the absolute, essential importance of independent medical assessments and medical monitoring in the workplace. I will let Stan explain that, because

he is with the Ontario Workers Health Centre and it has played a key role in our area on that.

Suffice it to say that if it had not been for the ability to determine independently whether the worker in the workplace is being affected, we could never have possibly understood our situation. There are so many people who have breathing problems, problems with skin rashes, problems that eventually can lead to their death, and they do not attribute it to work, they do not know it is coming from work. If you do not have somebody who can go in there and prove that it is, then those workers are dying and nobody knows.

I point you to the last page—I will just get to it in a minute, the bottom of page 8 and really the top of page 9—where we talk about the amendments that we want. I will just review them briefly.

First of all, there can be no decertification process. That is to say, if you are going to have a worker rep who is certified, who can shut down production, there can and should be no decertification process. Second, it has to be specified that the refusing worker will be paid in full for the entire period of the refusal up until the inspector issues the report. Third, the worker must be guaranteed the right to the doctor of his choice and the company must be obligated to pay the full cost for monitoring.

Fourth, there must be a provision for worker control of worker training. Fifth, there must be under the act a provision that medical clinics are totally under the control of union nominees only. Sixth, Bill 208 restricts the most essential functions of the safety committee. It has to be amended so that any worker member of the safety committee could carry out any of the functions necessary to represent the workers. In other words, what the bill does is, if you have a safety committee of more than one safety rep, there is only one certified worker, and it restricts the activity of that committee.

I will pass it on to Stan Gray.

Mr Gray: My name is Stan Gray and I am the director of the Ontario Workers Health Centre. We are a medical clinic and a health and safety facility that is independent of companies and government. We are supported by labour and we have done assessments and counselling for workplace problems all over Ontario.

Among the places where we have been actively involved are, as you have heard, de Havilland Aircraft and McDonnell Douglas aircraft. We were the medical clinic that was called in and assessed the workers at both those

plants and found very quickly an alarmingly high rate of disease, of cancers, of lung damage, of neurological impairments, of liver damage from all the toxic chemicals that de Havilland Aircraft and McDonnell Douglas aircraft was poisoning the workers with.

These people had been seen before by company doctors, by Workers' Compensation Board doctors. Not a damn thing has happened, because those people were paid to cover up the problems. As we were independent and responsible to the workers and the union, we found those problems. We found those problems, we documented them, and we worked with the union to help them get the plant cleaned up.

One of the things I wanted to say is that if there have been some plant cleanups in Ontario and if health and safety conditions have improved over the years, it is not because of the companies or the government or any of the laws we have. It is because workers have done it on their own. They have done it on their own with the help of independent, autonomous facilities and they have done it by exercising their own rights, their own right to refuse unsafe work.

They have not had a damn bit of help from the corporations, because the corporations were the ones that were polluting their plants, and no corporations are going to tell you that they are poisoning you. Their officers and their doctors are going to tell you there is no problem, when there in fact is a problem.

We found that because we were able to find the victims of workplace toxins and give that information to the union, they were able to use that to get a plant cleanup. It is because workers had the right to refuse unsafe work and they used it, several thousands of them at McDonnell Douglas aircraft and several hundreds of them at de Havilland, that they forced the corporations and the government to make those changes where they would never have done it on their own.

The reason I think Bill 208 is a problem is that it robs these workers of their rights. It cripples labour in the critical area by depriving them of facilities that they have to have the workplace cleaned up and by robbing them of their rights.

As far as the facilities that labour has had before it to assist it, Bill 208 makes both educational facilities and medical clinics subject to the veto of corporations. No clinic and no educational program is going to get funds unless management is half on the boards, unless it has a veto. I think it is a conflict of interest. No corporate director should be on the board of a clinic that has defined the victims of its own

workplace poisoning. No corporation should have anything to do with a facility that is to train and educate workers on health and safety. If workers have made a lot of improvements in the past, it is because they have had the aid of labour's educational facilities and they have had the assistance of an independent, pro-labour clinic that was able to define and document the victims of workplace pollution.

Bill 208 robs workers of these things. It takes them away from them. It subjects the boards of these places to management veto, and therefore it is not going to be of any use at all.

The second thing that Bill 208 does, as you heard, is that it robs workers of the right to refuse unsafe work by subjecting them to economic blackmail. If you want to continue to refuse after the boss thinks it is safe, you are going to lose money as a result. Health and safety laws are passed because workers should not have to choose between their health and their jobs. This God-damned bill says, "If you want to fight for your health, you are going to lose money and you may lose your job." Workers should not have to make that choice. They should be paid for a work refusal and they should be paid to the conclusion of it, not have to suffer an economic loss because they are sticking up for their health.

The last thing I wanted to say as far as Bill 208 goes is that, everywhere, it takes away rights that workers ought to have and ought to exercise independently on their own, and puts a management veto on them. The right of a certified representative to shut down is a hoax in Bill 208, because it can be cancelled by a management rep. You say you can shut it down, but the boss says no. The boss could shut it down anyhow if he wanted. Bosses never have shut down plants because they are unsafe, and it will not be done, but if you make that right dependent upon the bosses' agreement, you may as well not give them the rights.

There is no bill of rights in the world that says you can criticize somebody unless the person you are criticizing says you cannot do it. That is what you have in Bill 208. You have a right that is given to shut a plant down which can be cancelled by the management, so it is not a right at all.

What I think ought to be done is take away the management hammer-lock, the management veto, on the right to refuse, on the certified rep's right to shut down. You should kick the management people off the boards of clinics, kick the management people off the boards of educational facilities. Let the workers have their

own training, let workers have their own clinics. Let them have the right to shut down operations, let them have the right to be paid while they are sticking up for their health. Then the workers will have the means, they will have the instruments, they will have the tools to get the workplaces cleaned up. This bill is robbing workers of the rights, the methods and the weapons that they have used over the years to get plants cleaned up.

The last thing I want to say is that if places have been cleaned up, it is not because the bosses cleaned them up; it is not because the government forced them to clean them up. It is because workers like the unions at de Havilland Aircraft, McDonnell Douglas and elsewhere have used their rights, have used their powers and fought and got a cleanup despite these people. Bill 208, I think, was designed to take those things away, and it will be far worse after Bill 208 is passed.

One of the big battles that currently we are engaged in in Hamilton and Toronto is, unfortunately, there is a lot of asbestos contamination in our schools; that students, caretakers and teachers are being exposed to this thing in high amounts.

In the minute or two or three that are left, I want to introduce the president of the union of the caretakers in Hamilton which has led and begun, has pushed forward the fight to clean up the schools of asbestos. What he is going to tell you is that if Bill 208 had been in place, those kids, those teachers and those caretakers would be far worse contaminated by asbestos poisoning than they are now.

I want to introduce Gerry McDonnell in the time left to us, who is the president of CUPE Local 1344 in Hamilton.

Mr McDonnell: Thank you. I am not going to go over what has been so well presented by Jerry, Nick and Stan. I would just like to say that I am here as the president of the Canadian Union of Public Employees, Local 1344, representing 700 cleaners and caretakers in the Hamilton Board of Education. I am also the president of the Hamilton CUPE council. I am here in that capacity supporting the presentation before you because we agree with it lock, stock and barrel.

Just to lay the last of Stan's points to rest, to start with, it makes no more sense to me to have management or government members on the boards of educational facilities or medical monitoring facilities than it does to have the rapists, the assault artists and the thieves on the board of directors of the victims' committees.

1450

I think when you understand what we have gone through in Hamilton trying to clean up the schools, where we found badly damaged and loose asbestos flying all over the air systems in at least five major high schools in the city of Hamilton and where we found badly damaged asbestos material in pipe wrap and boiler insulation and fire curtains in every single one of 95 schools that we looked at, and when we brought it to the attention of the board of education, it turned a blind eye to it—it formally told us at one point that there was no asbestos in the schools, less than 16 months ago. When we went out and looked for ourselves, that is what we found.

When we involved the Ministry of Labour in it, it issued a whitewash document on 30 August of this year that misquoted, dishonestly quoted, the royal commission on asbestos findings which said that where asbestos is present, merely by its existence in a controlled building where it is in good shape, where it has been monitored, where it is not accessible, where there is no work that has to be done near it and it is not in the occupational zones of the building, it poses a low-level hazard.

They dishonestly took those quotes and applied them to the schools in Hamilton, where we had shown them over 50 photographs of the asbestos falling down in the air systems of those schools. We showed the Ministry of Labour inspectors that. We took them and almost rubbed their noses in the asbestos material. I had to force them to take a sample. I forced them by taking a sample myself and embarrassing them by sharing my sample of the material with them and having it inspected and checked out at the McMaster lab.

What happened is they issued this document that said that the buildings are safe because some government report issued five years ago deemed them to be safe, and they did not even quote the right sections of that. That is just exactly the same thing as saying that the police officers in the city of Toronto or any other city should ignore all of the assaults and all of the traffic violations and everything else that they witness because some government report five years ago deemed that under normal conditions the streets of Toronto are normally safe for pedestrians.

The Chair: Mr McDonnell, could you—

Mr McDonnell: Just in conclusion—

The Chair: Yes.

Mr McDonnell: —if Bill 208, in its present or its initial state, were in force at the time when we had our mass work refusals in the summer of last year, some of which lasted two months—and I

personally was threatened by the director of the industrial health and safety branch in the city of Hamilton that if I were the certified member under Bill 208, I would be decertified—our workers would not have been paid for the two months that they were forced to stand up for their rights.

When we forced the ministry one step further and wrote a letter to Gerry Phillips telling him that his inspectors were all deaf, dumb and blind and that they had their licences given to them by the Canadian National Institute for the Blind, he wrote a letter back saying, "I have checked with those very same people and they say that the situation is well in hand," and he turned the whole thing over to the advisory services branch, which then tried to convince us that the problem was one of communication.

I suggest, with respect to them, as I do to you, that the problem in Hamilton, as in McDonnell Douglas and de Havilland, is not one of communication; it is one of contamination. They are contaminating the atmospheres that our workers have to go in. If there is any lack of communication, it is between the Ministry of Labour and the employers, because the ministry is not enforcing the act that it is supposed to. In case there was any doubt, we have done more communicating than any local in this province.

The Chair: Okay, thank you.

Mr McDonnell: We have written to everybody, we have talked to everybody, and in case they did not understand the written word, we made a movie and showed that to them too. Just in case that debilitating disease—

The Chair: You have made your point very well.

Mr McDonnell: —that the ministry has is contagious in any way, I have copies of that video here and I will table them with you.

The Chair: Okay, we thank you very much for that.

Mr De Carlo: Just a final comment, one sentence.

The Chair: We are over now, so you had better make it brief.

Mr De Carlo: Yes, one sentence. We said in our report that we believe that if the bill is passed as it has been introduced, it is going to lead to greater conflict and it is going to lead to a bigger fight in the labour movement to improve the health and safety of the worker. I think it is important for you to know that the kind of unity you see here today is the kind of unity that is only

the beginning in the workers' fight for a safe and healthy work environment.

The Chair: On behalf of the committee, and I am sure I speak for the members of the committee, may I thank you for a very good presentation. It is obvious that you have put a lot of work into it, and it shows. Thank you very much on behalf of the committee.

[Interruption]

The Chair: Order, please. The next presentation of the afternoon is from the Canadian Retail Hardware Association.

Gentlemen, we welcome you to the committee this afternoon. It is obvious that there is a lot of interest in your presentation.

[Interruption]

The Chair: Order, please. We do want to hear the next presentation.

Gentlemen, we do welcome you to the committee. You know the ground rules, I think, that for 30 minutes we are in your hands, and you can use as much of that 30 minutes as you want for your presentation or you can allow some time for an exchange with members of the committee. If you would introduce yourselves, we can proceed.

CANADIAN RETAIL HARDWARE ASSOCIATION

Mr Ross: Thank you, and good afternoon, ladies and gentlemen. First, we want to thank you very sincerely for the opportunity of appearing before this committee today. We apologize to you that our brief was not delivered to you earlier. We just found out on Monday that we were going to have this time slot, so we have been doing a little scurrying around.

I understand that you heard this morning from the Retail Council of Canada, so this morning you heard from the biggest retailers in Ontario. I am happy to be here this afternoon representing the best retailers in Ontario. That is the independent, largely home-owned hardware stores that exist in every community of Ontario.

My name is Tom Ross. I am the executive director of the Canadian Retail Hardware Association. The organization has members in all provinces and parts of Canada, of course, but we have just under 800 member stores in the province of Ontario.

To my left is John Finlay, our executive vice-president of the association with particular responsibility for government liaison.

On my far right is Rich Carson who is a Home Hardware dealer from beautiful down-

town Bronte that Mr Carrothers knows very well. Rich is here because he operates a store that has 12 employees, so he is in that group of employers that will be between 6 and 20 employees.

To my immediate right is Don Guest and he is also an independent hardware dealer from Brampton, Ontario. He has 24 employees in his store, so he falls into that next bracket, between 20 and 50 employees.

We are also joined here someplace by Al Nash. Al is the retail development manager of Home Hardware stores. Home Hardware is a franchising group that franchises just about 450 independent stores in this province.

I know you have not had time to read our brief, because you just received it, so that is quite obvious. We will leave you to do that at your convenience. But I would like to read, just to bring our major points to your attention, a few pages of the brief, beginning with the conclusions that we reached that begin on page 15, and then read our resolutions or our suggestions, our recommendations.

Then we would like to spend a little bit of time talking about the really main concerns that we have with Bill 208, the couple of really main concerns we have with the bill, and then leave you some time to offer any questions that you might have. We would be very happy to attempt to answer those, anyway some of us up here.

1500

Beginning with the conclusions of our brief, the position of our association and our members when working with government has always been one of trying to build co-operation. Our concern with certain aspects of Bill 208 is not arrived at from pure self-interest. We know that health and safety are vital issues in the workplace and that Bill 208 is a sincere attempt on the government's part to address the issues involved. If health and safety is to be improved, it is essential that a co-operative and team approach is taken between employees and employer. A number of aspects of Bill 208 work directly against this objective, we believe, at least in our industry.

To make Bill 208 work will require leadership and a demonstrated commitment from everyone concerned. It is difficult for the employees in our industry to feel committed to a program in which, because they are not unionized, they have no say. It is also difficult for small independent retailers to feel committed to a program in which they have no effective voice. The answer to obtaining commitment does not lie in superficial changes to the bill or in the formation of a token small business advisory committee. If commitment is

to be achieved, it must be done through compromise, co-operation and teamwork between all parties.

While no one wants to put a price on health or on an individual's life, realistically, this still has to be considered. The introduction of Bill 208 in its present form—

[Interruption]

Mr Ross: Do you like my cheering section?

[Interruption]

Mr Wiseman: Mr Chairman, I have to ask you to bring some order here.

The Chair: Order, please. I will make one more plea to you that people who are appearing before the committee are here at our invitation. We do want to hear their views on Bill 208. I know that you will not agree with a lot of their views, but I also know that you will respect their right to be heard without harassment. I would ask you to respect that.

Mr Ross: However you view Bill 208, Mr Chair, and however anybody views it, it is true that the introduction of the bill in its present form will add significantly to the cost of doing business. This will ultimately mean an increase in living costs for every citizen in the province. If this increased cost was to make a significant contribution to saving lives or solving a major health and safety problem in the retail environment, it would be money well spent. However, we see no evidence of either numerous life-threatening situations or major health and safety problems in our industry. We are not talking for other industries; we are talking for the small retail industry. In fact, it is our understanding that Ontario business generally has an enviable record in the field of occupational health and safety, and again I am talking about the retail industry here.

In conclusion, our association and its members remain dedicated to working together with other business interests, labour and the general public to make our workplaces both healthier and safer for the benefit of all sectors of our society.

Now I would like to read the brief list of recommendations beginning on page 12.

1. The ultimate responsibility for the development and enforcement of health and safety regulations in the province of Ontario should remain with the Ministry of Labour.

2. The Workplace Health and Safety Agency should allocate half of its employee representative seats to the nonunionized sector. The balance of the employee representative seats should be allocated between the Ontario Federa-

tion of Labour, the Canadian Federation of Labour, Ontario section and other unions.

3. No less than one third of the employer representative seats on the agency should be allocated to small business. The proposed small business advisory committee is not a viable option because of its advisory capacity, we believe.

4. We fully support the addition of four professional members and a neutral chair to the agency. Each of the four members should have a vote and this chair should have only a casting vote. We agree with that.

5. The main focus of the agency should be on accrediting training courses offered by the various safety associations, in-house employer programs and community colleges.

6. Full use should be made of the existing educational facilities, ie, schools, colleges and universities. The existing health and safety associations should be left to carry out the actual training and certifying of employees.

7. There should be no interference in the day-to-day operation of the safety associations by the agency. The associations should introduce employee representatives and small business representatives on to their boards and the boards should be responsible for the efficient operation of the association.

8. The current right to stop work proposal should be eliminated and replaced by third party adjudication.

[Interruption]

The Chair: Order, please. We do want to hear the presentation.

[Interruption]

The Chair: We want to hear the presentation. Would you please allow the people to make their presentations. I do not want to get—

[Interruption]

The Chair: I want to tell you, we do want to hear what they have to say. If this hearing is going to continue this afternoon, it is going to continue by having people make their presentations without harassment from the audience. I can tell you that right now. It is simply not appropriate. I would not let anyone heckle you if you were up there making a presentation. I do not think that is asking too much. Go ahead, please.

Mr Ross: Again, we are presenting our own views, of course. We have sat respectfully and listened to the views of others and we would anticipate and expect that others would do the same, show us the same courtesy.

The right of the individual to refuse unsafe work would protect the employees until the matter could be ruled on by a representative from the Ministry of Labour.

9. Unsafe work activities should be covered under the individual right to refuse. However, specific standards concerning what constitutes unsafe work should be spelled out in the legislation.

10. The process of mandatory elections by employees of the safety representatives could be destructive and divisive in the independent retailer environment. Companies should be allowed to designate their representative. If this is not acceptable on an overall basis, at least it could apply to businesses with less than 50 full-time employees.

11. The act should clarify the term "employee," and this is a very central recommendation. The provision should cover only full-time employees or part-time employees who work a significant number of hours per week, ie, something over 30 hours, as an example.

[Interruption]

The Chair: I really do want this hearing to continue this afternoon because there are a large number of presentations to be made in the balance of the afternoon. We really do want that to happen. I would ask you to co-operate with the request that we have made. Go ahead, please.

Mr Ross: 12. The focus of the occupational health and safety regulations, the Ministry of Labour and the agency should be on education, co-operation and teamwork among all of the constituents, employers, employees and the general public. We are basically asking for a kind of a co-operative effort in this area of workplace health and safety.

Just to bring you back, before we get too far afield with questions on some of these things, I would like to refer you back to what we consider to be our main concerns, as representatives not of big business, but of small businesses that happen to occur and be sited in every community in Ontario.

We would like to emphasize to you the nature of the retail industry. Our part of the retail industry is basically a family-owned segment. It is not confrontational; it is not a management versus employees kind of workplace at all. It is a very co-operative kind of workplace where most employees in retail stores are an extension of the owners' or managers' families. I am talking again about small retail stores, not the large ones.

We do not think also that the retail sector is a major source of accidents. Now I am not saying

there are no accidents, back injuries and things of that nature, in the retail sector as there would be anywhere else, but it seems to us, from what we have been able to observe, that when that occurs, it is because somebody has kind of taken a shortcut. Instead of taking the hand truck to move a heavy parcel from one area of the store to another or from the receiving area to the sales floor, the employee has tried to lift it himself and suffered a back sprain or something of that nature as a result of it.

We do not see any way in which the kind of regulations that Bill 208 is putting in for these small retail stores is really going to prevent that from happening any more.

1510

There is also in this independent retail sector, small retail sector, a very high turnover of personnel, because retailing is looked upon by many people as a stepping-stone to some other kind of occupation. It is quite often the first kind of a job that people get when they go out into the workforce and then they graduate from a retail sales clerk position to something else.

So there is a lot of turnover and we see a lot of high costs involved for those small retailers in training certified employees and then having that employee leave and having to retrain somebody else to take that place. We are concerned that, for those small retailers, Bill 208 is going to introduce confrontation into an atmosphere, into an environment which has never been confrontational before.

The second point that really concerns us, I guess, is that we really do feel that Bill 208 casts the net too wide. I can fully appreciate some of the problems experienced by employees at some of the larger industrial plants, perhaps by employees at some larger retail concerns as well. But when the net is first of all applied to an organization that has six or more employees, it is a very tiny, teeny store. We estimated before we came in here that a maximum of about three per cent of our members would operate with less than six employees, so this net that you are casting is basically going to affect all retail stores, with very, very few exceptions, in the province of Ontario.

Part of that, of course, occurs because—our legal counsel at least tells us, because it is unspecified in Bill 208—it would apply to part-time retail employees equally as well as it would to full-time employees. So in the count of employees, you count a part-time employee as a full employee. Our counsel also tells us that if the retailer has happened to—and this is quite common

practice—get some people in to wash the floor at night after the customers have gone and the staff have gone home, if he pays them rather than hiring a contracting firm to do it, they would indeed be counted as employees. So all of these things mean to us that basically this legislation is going to apply to very small businesses indeed.

We would like to suggest to this committee that it seriously considers defining within Bill 208 that the number of employees, first of all, applies to full-time, rather than full-time and part-time employees, to remove that uncertainty, I suppose, and to at least raise the threshold a little bit for the people who operate with a fair number of part-time employees, but maybe only ma and pa and somebody else in the family as full-time employees.

We would also ask you to seriously consider raising the starting threshold for retailers from the threshold that exists now of six employees and becoming, of course, more important at 20 or 21 employees. We would just actually ask you to consider raising that threshold to 50 or something close to 50 employees in the retail sector.

[Interruption]

Mr Ross: In the retail sector. I am not talking about anything else. We are talking about an area where there is no demonstrated health risk and occupational risk. We notice that the minister, in some of the changes that he has been suggesting to Bill 208 for construction projects of less than six months' duration, has said, "Okay, it won't apply unless there are over 50 workers working on that job." We think, if that is fair for a construction site, which we would suggest is much more accident-prone than a normal retail store, then it should be fair for a retail store as well.

Those, ladies and gentlemen, are our major concerns, that the net is too wide and that it involves too many organizations. It involves very, very small retailers indeed appointing or having elected a workplace safety representative. This gentleman just to my right has 24 employees, counting his part-time employees, and he would be obliged to train somebody he would designate and somebody his employees would designate as the workplace certified representative, and it is a very high cost involved here.

[Interruption]

The Chair: Thank you, Mr Ross. Is that it? Mr Wildman has a question.

Mr Wildman: I appreciate your presentation and I hope you will understand that obviously there are high concerns and feelings in the room.

I want to deal with a couple of things, particularly pages 15 and 12 where you talked about lack of representation for your employees because they are not unionized. Are the members of your association also members of the Ontario Retail Accident Prevention Association under the Industrial Accident Prevention Association?

Mr Ross: I suppose they could be on an individual voluntary basis. I do not know.

[Interruption]

Mr Ross: Could you tell me what the significance of the question is?

Mr Wildman: The reason I was asking is, if you are indeed members of that association which the Retail Council of Canada this morning referred to—they pointed out this morning, despite the concerns that they also expressed about representation for unorganized workers, for nonunion workers, that they have not voluntarily placed any representatives of the unorganized workers on that association. If they were really concerned about representing them, I would have thought they would have moved to represent them on the accident prevention association that they support. I was just wondering if your members are not members of that—I guess it does not matter.

Mr Ross: No, we are not.

Mr Wildman: Okay, then the only other question I have is—two short matters—would you not agree that management has the unilateral right to shut down a workplace?

Mr Ross: Absolutely.

Mr Wildman: And if you are not in favour of workers also having a unilateral right to shut down a workplace for safety reasons, would you consider giving up management's unilateral right to shut down?

[Interruption]

Mr Ross: Mr Wildman, to respond to that, in reality, in the retail business we have to say yes, management does have a right to close down the workplace. That is the same thing as saying management has the right to go bankrupt in a retail store, because if you close down a retail store, you close down your livelihood. There is no way that a retailer worth his salt is going to close down that workplace.

Mr Dietsch: I want to ask, with respect to your experiences with the right to stop work as it exists under the current act, have you had any experiences with the stop-work provision at all?

Mr Ross: We have not. We polled some of the wholesalers in our industry to hear if they had had

any indication of any large amount of this happening, and it just does not happen. It just has not happened, certainly to any extent that has brought it to our notice.

1520

Mr Dietsch: Some of the businesses and unions that have been presenting briefs before us have indicated some concern on the part of the union with respect to individuals who had refused to work when the management had gone to other employees within the realm of the company and, one way or the other, had solicited those employees to work on a job that had been refused. I guess the question I am leading up to is whether your organization would support joint consultation in that respect or in fact joint consultation on both ends of the scale, whether it would be shutting jobs down or starting jobs up.

Mr Ross: Yes, I would think so. I would think that we would be very supportive and I think our members would be supportive of joint consultation and things of that nature. I cannot sit here and say that no employee of a retail store has ever lost his job or has never been disciplined because he has refused to do something that he felt was unsafe. I really cannot say that, obviously. So some time, some place or other it has happened. It just is not a widespread practice; that is all.

The Chair: Mr Ross, I thank you and your colleagues for your presentation to the committee this afternoon. You have helped make it an interesting afternoon.

The next presentation of the afternoon is from the Occupational Hygiene Association of Ontario. Gentlemen, we welcome you. This is the first opportunity we have had to hear from you and we are anxious to hear it. I think you know the next 30 minutes are yours to use as you see fit, so if you would introduce yourselves we can proceed

OCCUPATIONAL HYGIENE ASSOCIATION OF ONTARIO

Mr Goodfellow: Good afternoon, ladies and gentlemen. I would like to thank the standing committee on resources development for the opportunity for the Occupational Hygiene Association of Ontario—we call ourselves OHAO—to present our position on Bill 208. We earlier brought along 25 copies of our written submission which have been deposited with the clerk and I believe you have those at the present time.

I am going to introduce the representatives of OHAO. My name is Howard Goodfellow. I am the current president of OHAO and I am also president of Goodfellow Consultants, which is a private consulting firm in the occupational health

and safety field working for industry and government in Ontario. Other members of the committee: On my immediate left is Dr Om Malik. He is president-elect of OHAO and is chief, occupational health hygiene service, Ontario Ministry of Labour. On his left is Rudy Fliegl. Rudy is chairman of the Occupational Hygiene Issues Committee and is a private consultant in the occupational health and safety field. On the far left is Dr Roland Hosein. He is past president of OHAO and is manager of corporate health, safety and environment at General Electric in Mississauga.

We appreciate the opportunity to comment on Bill 208 and to acquaint the committee with our association and the profession of occupational hygiene. We have decided for our presentation to cover four areas. One area is to really tell you who we are and what our role is. Second, I am going to talk about some of the major reasons why occupational hygienists in OHAO are interested in Bill 208. Third, we have general comments on Bill 208. Fourth will be specific comments on Bill 208 and we have identified five areas and comments and these are detailed in the brief which is in front of you. These five areas will be the internal responsibility system, IRS, industrial hygiene work site testing, definition of an occupational hygienist, Workplace Health and Safety Agency and the duties of an employer.

Let's start by talking about OHAO. OHAO is a not-for-profit provincial association of about 500 professionals engaged in the scientific and technical aspects of the workplace environment. Our membership includes the following: certified and registered occupational hygienists, occupational hygienists, professional engineers, occupational hygiene technologists and technicians, and allied workplace health and safety professionals.

The recognition, evaluation and eventual control of workplace hazards or stresses which may lead to illness or discomfort are the primary role of the occupational hygienist. While many occupational hygienists are employed by industry, they are also employed by labour organizations to protect workers' interests and respond to government occupational health and safety regulatory proposals. Indeed, government hygienists are actively involved in the development and application of these regulations.

The objectives of our association are to promote and encourage research, teaching and training in occupational hygiene. Another objective is to promote the study, evaluation and

control of environmental stresses arising in or from the workplace or its products in relation to the health or wellbeing of workers and the public. Another objective is to serve the interests of the members by promoting and developing the profession of occupational hygiene. Item 4 is to promote the profession of occupational hygiene through the encouragement of industry within, and co-operation with governmental, industrial, labour, educational, professional and other organizations.

OHAO received its present name in 1984 and grew out of the then existing Ontario section of the American Industrial Hygiene Association. This initial local association was brought to Ontario from the United States in the early 1960s by a small group of Toronto and Ottawa area occupational hygienists. It can be seen that OHAO emerged out of humble beginnings and can now claim a history of over 25 years acting as a forum for the views of Ontario's professional occupational hygienists.

The committee will be interested to find that occupational hygiene is not a new profession. It had been used by the ancient Greeks to reduce worker deaths in mines. The first crude publications on occupational disease appeared during the middle ages, although prior to the year 1900 there was little of our current concerns for employee health protection. Today, as we all know, that has dramatically changed as illustrated by health and safety legislation in every jurisdiction. We do not consider our profession to be a pure science, but rather a mixture of art and science. It covers a broad spectrum of the work environment including hazard anticipation, recognition, qualification, quantification, evaluation and control.

Today's occupational hygienist is typically a science or engineering graduate, usually with a chemistry major. This hygienist would also have a graduate degree in occupational hygiene, occupational health science or occupational health and safety engineering. They would then gain work experience for a period of up to five years before eligibility for certification or registration through professional examinations.

It is important for the committee to know that OHAO members are bound by a code of ethics which states in part, "Recognize that the primary responsibility of the occupational hygienist is to protect the health of employees." Also it is to, "Hold responsibilities to the employer or client subservient to the ultimate responsibility to protect the health of employees."

If the employee and employer are considered to be practical experts at their workplace, then OHAO suggests to this committee that the occupational hygienist can be regarded as a scientific and technical expert of that same workplace.

1530

I would now like to cover some of the major reasons why we are here, why occupational hygienists in OHAO are interested in Bill 208. I am going to give you some examples, sections from the bill, and the areas that are important to occupational hygienists.

Subsection 4(4) of the bill, subsection 8(5f) of the act, page 5, talks of certified worker. It says two certified workers will be required, one representing the employer-constructor and a second representing the workers, on the health and safety committee. Occupational hygienists use certification for minimum qualifications by examination, as well as a recertification process. We also have scientific and technical knowledge of the work environment. How would these certified workers qualify, and who will train them and how? We feel that hygienists should be involved in and with the Workplace Health and Safety Agency.

Subsection 4(7) of the bill, page 6, titled work site inspection; a member of the work site health and safety committee shall inspect at least part of the workplace each month so that the entire site is inspected annually. OHAO believes that the capabilities of health and safety committee members vary from excellent to poor and thus their training is important. Since we have such training skills, our involvement in the above agency is necessary.

Section 5 of the bill, subsections 8b(1), (2) and (3) of the act, on page 7, talks of occupational hygiene testing strategies. I stress to the committee that occupational hygienists have a long history of involvement in assessment and control of workplace exposures to hazardous agents.

Training programs for the workplace, section 6: Legislation will give the agency domain over all training programs for workers, committees, certified workers, etc. Again, we believe that occupational hygienists should be involved in the agency.

I could go on and give you many other examples where occupational hygienists and OHAO are interested in Bill 208. I am going to just list a few more. One would be the agency to accredit company programs. Legislation will allow the agency to give accreditation of

employers who operate successful health and safety programs.

Section 9 talks of monitoring reports. Employer-constructors will be required to provide all workplace monitoring reports to the committee representative and then advise all workers. Where such reports pertain to the work environment, interpretation will be required and therefore the skills of a qualified occupational hygienist.

Section 12 of Bill 208 talks of hazardous materials and conditions. Before beginning a project the owner should determine the presence of designated substances, conditions, hazardous materials, etc, and prepare a list before tendering the project.

Section 14, section 19a of the act, is on the duty and care of the senior executive of a company. Company officers would be responsible and accountable under the act. Another area is seizure of documents. An inspector will be empowered to seize documents, things, etc, as evidence.

Talk of compliance plans is section 25, page 19. A constructor-employer may be required to submit a compliance plan under the terms of an inspector's order. Last, the work stoppage: Certified workers could stop work. Since such stoppages are critical to many continuous operations an employer-constructor should have the best possible occupational hygienist's advice available to him or her to avoid confrontations and disputes.

Moving on to Bill 208 and general comments, OHAO supports and believes in Ontario's internal responsibility system, or as we all know it, the IRS. We believe in the employee's right to know about workplace hazards. We believe in the employee's right to refuse work where his health or safety may be in danger. We believe in the employee's right to participate in workplace decision-making by way of joint health and safety committees and other means.

Bill 208 would seem to enhance and extend these established concepts, expand the workplace knowledge, workplace partnership, and require a greater pooling of technical knowledge of the workplace. Our OHAO code of ethics makes protection of employee health the principal goal of the occupational hygienist. OHAO supports the principle of the promulgation of legislation that provides further protection for employee health and safety.

Item 4, which we are covering, is specific comments. These are detailed in the brief, but I

would like to just go over the five items for the committee.

The first item is the internal responsibility system. The Ontario Ministry of Labour has chosen the IRS as the province's model for self-compliance with the Occupational Health and Safety Act and its regulations. While we recognize that it may not be easily defined, we feel that MOL's self-compliance philosophy by way of the IRS should be included in this proposed revision of the act.

It should be noted that the 1986 McKenzie-Laskin study for the Ministry of Labour, Report on the Administration of the Occupational Health and Safety Act for the Minister of Labour, recommended, "The act should be amended to include, as a preamble, an appropriate description of the philosophy of self-compliance and of the purpose and structure of the internal responsibility system." OHAO endorses this recommendation made to MOL in 1987 by its contractor.

The second item on Bill 208 is industrial hygiene work site testing. For the committee, it is important that occupational hygienists have a long history of involvement in assessment and control of workplace exposures to hazardous agents. For this reason OHAO has a major interest in how legislation addresses industrial hygiene work site testing. OHAO encourages consultation between employers and workers on testing strategies. However, we have concern that this provision not be interpreted in such a way that the basic practice of occupational hygienists is constrained.

Further, we suggest that government should consider the merits of requiring employers to obtain the advice of a qualified occupational hygienist in devising testing or exposure assessment and control strategies for hazardous agents. Our brief outlines recommended changes to subsection 8(b)(1) and subsection 8(b)(2) of Bill 208. I am not going to go through those for you.

Definition of an "occupational hygienist," is item 3: In section 1 of the act we define "worker," "supervisor," "employer," "owner," "constructor," "inspector," "engineer," "director," "deputy minister," and others. In support of our previous recommendations, it is opportune to recognize the occupational hygienist as a major participant in the scientific and technical aspects of the workplace environment. OHAO recommends that the following definition of "occupational hygiene practitioner" be also included in section 1 of the act:

"An occupational hygienist means a person who by virtue of education and work experience

can be recognized as qualified by the American Board of Industrial Hygiene."

Item 4 is on the Workplace Health and Safety Agency: The second reading of Bill 208 provides for representation of health and safety professionals on the board of this proposed agency. Our members believe that because of our training and experience we can make a significant contribution to this agency. Consequently, we believe that our profession should be represented on such an agency.

Item 5 is the duties of the employer. OHAO supports the requirement that all Ontario organizations have a written, up-to-date health and safety policy.

In conclusion, OHAO appreciates the opportunity to make our presentation on Bill 208. The very economic viability of our province depends on the workability of important legislation such as Bill 208. Our common goal is to protect the health and wellbeing of the men and women in our workplaces. OHAO supports in principle the promulgation of legislation that provides further protection for employee health and safety. I thank you for your time.

1540

The Chair: Thank you, Mr Goodfellow. Tell me, when the workplace hazardous materials information system legislation, the right to know legislation, was being drafted, were the hygienists involved in that process?

Mr Goodfellow: Yes.

The Chair: What was your role in that process?

Mr Fliegl: I guess we individually represented our industry associations or our employers on the federal group, Canadian Association of Administrators of Labour Legislation—occupational health and safety division. We did not take a direct ownership share in the provincial legislation, but of course that came out of the model bylaw that was developed under this group. Many of us participated in that.

The Chair: Thank you very much. We appreciate your presentation because we know that occupational hygiene is a major portion of the whole question of health and safety in the workplace. We appreciate your presentation to the committee.

The next presentation is from General Motors of Canada. Has your brief been distributed yet?

Ms Rodgers: There are two portions to the brief.

The Chair: We will get those distributed immediately. In the meantime, if you could

introduce yourselves, we could proceed. The microphones will be operated by what we call our A team over here in the corner, and we can proceed when you have introduced yourselves. The document with "70" on it is yours, right?

Mr Strong: There are two documents you should have.

The Chair: Okay, I think we are set to go, so if you want to proceed, for the next half-hour we are in your hands.

GENERAL MOTORS OF CANADA LTD

Mr Strong: Great. Good afternoon and thank you for this opportunity. My name is Wayne Strong, director of labour relations, industrial hygiene and health and safety for General Motors of Canada. With me is Ron Boissin, who is manager of health and safety for GM of Canada, and Barb Rodgers, who is with our government relations organization. I will be commenting from the executive summary that I hope all of you have at this point in time.

General Motors of Canada believes that a safe work environment is achieved best by an unwavering commitment on the part of employers, unions and employees to create the safest possible work environment. Legislation should only set the framework in which to build this environment of commitment and co-operation and provide protection for the rights of all concerned.

At General Motors of Canada, providing a safe work environment for our 34,000 employees located in 12 facilities in Ontario is critical to the successful operation of our business. Safe work practices make sense not only from a humanitarian standpoint but from a business standpoint as well. To reinforce our commitment to the safety and wellbeing of all our employees, we support actions intended to protect our workers. Our goal is zero workplace accidents, but unfortunately accidents can and do happen.

It is our hope that through this consultation process and by working in partnership with government, labour and other interested parties, changes to the Occupational Health and Safety Act will be designed in such a way as to have a significant positive impact on safety and employee health, which will contribute to the success of people and the business environment.

General Motors of Canada supports health and safety reform which is based on a commitment and accountability on the part of employers, unions and employees to make it work. Joint responsibility and commitment is a critical

element and must form the basis for this legislative reform.

We support the Minister of Labour's objective of improving workplace safety. We share his concern and that of workers about the incidence of injuries occurring in the workplace. Our experience tells us that the best approach to improve safety is to focus on accident prevention and the education and training of safe work practices. We must be responsible for our own safety as well as being responsible for the impact that our actions will have on the safety of those around us.

The internal responsibility system has been an important component of workplace safety in the past and we remain committed to a strong internal responsibility system as the most effective method of working towards a safe work environment. Co-operation and a commitment to safety at all levels of the organization are necessary to establish a safety culture based on an environment of involvement, trust and accountability. The internal responsibility system cannot work effectively without these elements.

While General Motors of Canada supports Bill 208's principle of co-operation and shared responsibility, we are, however, very concerned that elements of the bill in its current form will potentially frustrate, not strengthen, a shared responsibility system. Furthermore, Bill 208 does not resolve all the problems inherent in the current Occupational Health and Safety Act.

Let me explain. At General Motors, safety is a priority in the design and maintenance of our manufacturing facilities. Consistent with our commitment to safety, joint health and safety committees were established in our plants long before they were required by any law. Members of these joint health and safety committees work on a full-time basis addressing concerns in the workplace, responding to individual concerns, providing training and education and evaluating and improving General Motors of Canada's overall safety program.

I must emphasize that members of these committees are full-time safety representatives working 40 hours or more per week. In addition, these committees can jointly determine if something is unsafe and stop work in situations that present an imminent danger to an individual or individuals. The various duties and responsibilities are set out in provisions of the GM-Canadian Auto Workers master agreement, and for reference I refer you to the attachment.

Safety training has been the key to the success of our safety program. All new employees

receive safety training and all production employees receive up to eight hours of safety training each year. General Motors of Canada's apprentices receive 80 hours of joint safety training, and skilled-trades employees receive 40 hours of joint training.

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GM and the CAW have jointly established specific lockout and confined-space training. Approximately 33,000 employees have received eight hours of joint chemical awareness training, and in addition, General Motors maintains onsite medical facilities with trained personnel.

General Motors of Canada's approach to safety is founded on close co-operation and shared responsibility between GM, our unions, our employees and the government. As an example of the success of our safety program, in April 1988, General Motors received the Construction Safety Association of Ontario's award of excellence for a safety record that was three and one half times better than Ontario's industry average. In fact, it was the best record ever recognized by the construction safety association for such a massive number of construction man-hours.

Despite the extensive joint and co-operative safety programs in place, we are witnessing increases in the number of safety work refusals. We are increasingly concerned that a balance does not exist and accountability has not been established to address individuals using the work refusal to achieve other goals. Our analysis has indicated that many of General Motors' work refusals are not related to an imminent danger. As a result, safety concerns that could have been addressed in other ways resulted in costly work stoppages. We believe the intent should be to provide a means for employees to stop work for current or imminent danger.

In 1989 General Motors of Canada's Ontario locations experienced 300 work refusals; 91 per cent of these were resolved internally. Of the 28 remaining refusals involving a Ministry of Labour health and safety inspector, the inspector left orders on only 11 occasions.

Another important comparison can be made between our vehicle assembly and component parts operations. A work refusal in our vehicle assembly operation can result in an entire plant being idled during the refusal. This can mean idling upward of 3,000 employees for one incident. The component parts operations do not have the same fixed-line relationship but they too have significant numbers of employees who are impacted by a single incident. In 1989 our

vehicle assembly facilities with approximately 16,000 employees experienced 234 work refusals resulting in approximately 3,800 units of lost production. The component parts operations with approximately 18,000 employees experienced only 67 work refusals.

During the three-year period 1987 through 1989, General Motors of Canada experienced 655 work refusals, with almost one half of that total occurring in the last year. Of those refusals, approximately 85 per cent were resolved without having to involve the Ministry of Labour inspectors. However, the unclear nature of the language in the Ontario Health and Safety Act, coupled with work stoppages which were not the result of current danger, accounted for a large part of the 6,000 vehicles and over 260,000 man-hours lost. During the same period, our accident frequency has decreased approximately eight per cent, our accident severity rate has decreased approximately 10 per cent and days lost due to accidents has decreased 12 per cent. These are significant improvements, given a workforce of approximately 34,000 hourly employees.

By way of a recent example, an entire shift of 2,400 workers was sent home and seven hours of vehicle assembly (or approximately 385 vehicles) were lost as a direct result of a work refusal and a subsequent production line stoppage that should have been avoided. In this instance, even though corrective action had been recommended by the supervisor, the health and safety representative insisted that the Ministry of Labour be involved, thereby continuing and extending the refusal. After several hours, the Ministry of Labour inspector arrived, and through an examination of the work refusal, found that the original resolve suggested by the supervisor several hours earlier was satisfactory and that the matter should have been resolved internally without Ministry of Labour involvement. In other words, the corrective action, supported by the inspector, was exactly the same as the original resolution offered by management at the onset of the work refusal.

This is but one example whereby a concern on the part of employees resulted in an unnecessary work refusal, which resulted in General Motors losing significant production. Clearly, this impacts our ability to be a viable and secure employer.

We are concerned, as we understand the Ministry of Labour health and safety officials are, that section 23 (the worker right to refuse) of the current act is all too often misused. We share

the view that a number of costly and unnecessary work refusals could be avoided if a preamble inserted in the front of section 23 established that unless a situation of imminent danger exists, a worker may refuse to work under section 23 "only after exercising his/her duties as outlined in section 17," and that it is the responsibility of a worker to consult with his or her supervisor.

[Interruption]

The Chair: Order, please. Would you please contain your enthusiasm for the next presentation and let these gentlemen finish theirs?

Mr Strong: Additional accountability must be built into Bill 208 to control the misuse of the worker right to refuse, and further, Bill 208 must establish consequences for situations of unfounded work refusals which result in production loss.

The current situation with respect to unfounded work refusals has the potential to undermine the reforms sought by the legislation. The consequences of abuse must be clearly established in the legislation. This would provide management and labour with the power needed to ensure that the purpose of the health and safety legislation will not be thwarted by individuals misusing the legislation.

General Motors of Canada supports the need to address work activity as it relates to the workplace safety. We do not agree, however, that work activity should be incorporated into section 23, the right to refuse work. We support the minister's proposed change that would define work activity more narrowly, making it clear that the right to refuse is restricted to current danger and that longer-term ergonomic concerns are dealt with through the joint health and safety committee.

The act obviously recognizes, as we do, that the individuals required to make a determination on work refusals, for example, members of the safety committee or Ministry of Labour inspectors, are not necessarily qualified to make a judgement on repetitive motion or ergonomic concerns. These concerns are more appropriately studied over time, with modifications made to the work environment if it is determined that they are required.

We are pleased that Bill 208 gives additional responsibility to employees and their representatives in controlling the work environment, but this additional responsibility is given without adding the appropriate accountability. We believe that for the most part the additional powers established in Bill 208 for employees and their representatives will be used responsibly, but in those areas of potential abuse we must ensure

appropriate accountability. However, if safeguards are not established for those instances where they are not used responsibly, the interests of safety will not be effectively served.

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Legislation must precisely define a justifiable work stoppage in order to help eliminate abuses, which in our industry can and do equate to millions of dollars. Further, unjustified work stoppages can lead to a work environment where co-operation and commitment are not present and real safety issues are diluted by the controversy over unfounded ones. Where the real safety issues of the workers are overshadowed by the contention surrounding unfounded work stoppages, these workers lose some of the protection they deserve.

Bill 208's proposal to increase the size of the joint health and safety committee does not appear to consider the differences between full-time and part-time committee members. General Motors' current full-time committee members can more effectively ensure a safe work environment than a part-time committee twice the size could. We feel that our current committee structure need not be increased as we currently provide more service than the part-time structure as proposed in Bill 208.

In addition, we do not support the extension of the full joint health and safety committee to office locations. Safety issues in offices and manufacturing locations are significantly different. The key to safety in office locations is a trained and knowledgeable workforce and a safety-conscious management. In addition, safety in General Motors' office locations can be effectively monitored by one employee representative for each multi-office region.

General Motors supports the certification of our joint health and safety representatives to the extent that this would provide a higher level of training. We believe that the certified representatives should jointly make recommendations on the training and education needs in their unique workplaces. They can also play an integral role in developing a co-operative safety environment and in educating employees on their rights to refuse unsafe work in cases of imminent danger, which should be defined in the legislation.

The proposal to give a certified representative the unilateral right to stop work is inconsistent with Bill 208's focus on co-operation and shared responsibility and should be changed.

At General Motors of Canada, the health and safety committee can jointly stop work in situations of clear and imminent danger. Again,

you can reference the attachment, the GM-CAW memorandum of understanding. It is difficult to support Bill 208's stop-work proposal which links the unilateral right to stop work to poor safety performance without knowledge of the standards for determining good and poor performers.

We support the proposal of a joint committee decision to stop work as it is currently our practice. We also agree that it is appropriate to recognize both good and poor safety performance, thereby allowing the Ministry of Labour to concentrate its efforts on the poor performers, but we do not agree that this concept should be linked to the ability to stop work.

The proposed Workplace Health and Safety Agency will undoubtedly play a major role in the direction of Ontario's workplace safety. We see definite value in the agency acting as an accreditation body for health and safety related training courses and would state that where employers like General Motors have already invested a great deal of time and money on joint training, the agency acknowledge this training as appropriate for the initial standards for health and safety committee member accreditation.

Bill 208 also proposes that the agency assume a wider range of regulatory and operational activities. Aside from its accreditation role, the agency needs to establish itself as a consensus-building group before any additional power should be considered. In its early stages, the agency would be effective as an advisory group and should remain so until the agency itself and the Ministry of Labour agree to a phase-in of authority.

Further, if the agency is to establish credibility as a legitimate body, the structure must accurately represent the dynamics of Ontario's workforce. Nonrepresented labour should be included on the agency in the same way that small business should be included. For example, we do not support a position that would see the agency dominated by large business and large labour organizations. Many of our suppliers are smaller organizations with nonrepresented workforces. We strongly believe that both these employers and workers have the right to be represented on the agency.

We support the Minister of Labour's proposal to create a neutral chairperson and to add additional safety professionals to the agency. To be effective, the agency must be a strong consensus-building group. As a result, the neutral chairperson should not be given the

deciding vote, but could effectively act as a co-ordinator and facilitator.

The role of the safety professionals also needs to be clarified. For example, it needs to be clearly stated whether or not these safety professionals will be voting members of the agency.

The agency's focus must be on health and safety. To achieve this, all of the agency's directors should be knowledgeable health and safety professionals and should not be drawn from staff or political organizations of large business associations and labour organizations. The agency must remain focused on safety and act responsibly and objectively in the interest of good safety and good business.

Safety associations and their teams of dedicated volunteers are a cornerstone of Ontario's health and safety system. Forcing equal union and management representation on the boards of these associations could jeopardize their very existence. We feel that the appropriate structure for each industry should be left up to the individual association to decide.

Of concern to General Motors is Bill 208's proposal that an employee's participation in an employer's medical surveillance program is voluntary. We believe that this is not consistent with the intent of Bill 208 because an employee who refuses to participate in these early detection programs detracts from an employer's and an employee's ability to detect and avoid a potential problem later on. As a result, both are denied the benefit of early detection, and the employer is forced to pay the possible consequences through the workers' compensation system. We are convinced that the employees must participate in legitimate medical surveillance programs that protect both the employee and the employer.

General Motors has established effective working relationships—

[Interruption]

The Chair: Order, please. Please let the presentation come to its natural conclusion. There are still about three or four minutes left in time, so they have not gone over their time allocation.

[Interruption]

The Chair: Order, please. We do not want this presentation to cut into the time of the next one. Go ahead, Mr Strong.

Mr Strong: General Motors has established effective working relationships with the Ministry of Labour's health and safety inspectors. We are concerned, however, that the additional powers of the inspectors established by Bill 208 are

inappropriate, particularly the ability to require additional tests. This power could be used to avoid making a difficult or unpopular decision by requesting additional tests that may in fact be unreasonably expensive and also unnecessary. We do not believe this to be in the best interest of the employee or the employer.

As I conclude, I would draw your attention to the additional issues of a technical nature outlined in our written submission. Where possible, we have provided recommended wording to support our proposals.

We commend the efforts of this committee to publicly debate these issues and respectfully submit that this legislation is very important in many respects to employees, unions and employers. Therefore, it is of critical importance that Bill 208 reflect the needs of all parties to ensure a safe and viable work environment. I would also submit that you need to be sensitive to the cumulative impact of all government programs. This bill, in conjunction with initiatives like pay equity, the workplace hazardous materials information system and pension reform, is a well-intentioned piece of legislation.

[Interruption]

The Chair: Order, please.

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Mr Strong: We believe that we are managing these initiatives well, but at the same time they place a tremendous burden on employer resources. Obviously this translates to the very issue of viability in the market and the ultimate job security of the Ontario worker.

I appreciate the time this committee has spent with us today.

The Chair: Thank you, Mr Strong. I know I speak for everyone when I say I wish we had more time, but we do not, so I appreciate your presentation to the committee.

Mr Strong: I assume it is all right for us to stay for the next one.

[Interruption]

The Chair: Oh, yes. Order please. We have a point of order from Mr Mackenzie.

[Interruption]

The Chair: Order, please. We have a member of the committee wishing to make a point of order.

Mr Mackenzie: On a point of order, Mr Chairman, if I can have your attention for just a moment. I am going to file with the committee a 20-page fax that was presented to me today by Moe Kuzyk, who is the national co-ordinator for

health and safety for the Canadian Auto Workers union and who deals with many of the problems and lost-time issues that have been raised at General Motors. It has Ministry of Labour orders dealing with the lost-time incidents that have been referred to in the testimony here, and some of the reasons for them and some of the problems with training of supervision and others in that plant. I will make it available so that people can use this documentation to respond in their own minds to some of the charges we have heard here today.

The Chair: We will make sure that is distributed to members of the committee.

Our next presentation is from the United Steelworkers.

[Interruption]

The Chair: Order, please. There will be no heckling.

I recognize Leo Gerard, who is director of the Steelworkers. Mr Gerard, I think you know the ground rules. The next 30 minutes are yours, and if you will introduce your colleagues, we can proceed. Welcome to the committee.

Mr Gerard: Thank you very much. I would just ask the indulgence of the chair that if during my brief there is a lot of booing, please do not deduct it from my time.

UNITED STEELWORKERS OF AMERICA

Mr Gerard: I want to start off by introducing the members of the committee who are with me. On my far right is Gordon Falconer, the president of our Toronto area council that has presented a brief that is in the pile. Next to Gordon is Josephine Urh, the president of our area council of local unions in the Peel-Halton area. Next to her is Dan Waters, the president of our area council in the Barrie-Orillia area. All have presented briefs to the committee that I am sure you will circulate. We have also presented briefs from Local 9176, Local 9088 and Local 4025 that I am sure the clerk of the committee will circulate.

Before we get to the formal part of our presentation, I could not help but feel quite entertained by the last presentation. I will only say to you that to the best of my knowledge employers in this province have had the unilateral right to shut down workplaces for unsafe and unhealthy circumstances since the beginning of time. This committee has already been reminded, but I will remind you again, that with that unilateral right, last year we had over 300 workers die from industrial traumatic accidents, over 6,000 die from industrially induced disease,

and literally hundreds of thousands maimed and injured as a result of having employers with the unilateral right to shut down. It is about time you gave it to workers so we can stop the slaughter in our plants and workplaces.

I again, then, by preliminary matter, want to take offence at some of the things that are going on, both in this committee and with the Minister of Labour as these hearings go on.

The first one that I want to address—if I am wrong I will stand corrected, but I am not sure that I am wrong so I will say it—is that one of the members of your committee at a hearing either in London or in Windsor went on to make a statement that one of our members who was involved in a fatality in Niagara Falls at Gerber Baby Foods did not make an initial refusal to work that led to the fatality of one of our members.

I am led to believe that the member of Parliament was from St Catharines, Mr Dietsch, and at this point I want to tell Mr Dietsch that I have Leo Dopke with me, the member of our union who refused the initial request to work. Had his refusal been passed on to his co-worker, that co-worker would be alive today. So Mr Dietsch, do not make those comments again. The individual on my left is Mr Leo Dopke, a member of our safety committee at Gerber Baby Foods.

There is another issue that has been in the public eye a lot that I find tremendously offensive, and I want to clear it up today for the final and last time. I do not know how many times before this committee you have been told in presentation after presentation, I do not know how many times I have told members of the Ministry of Labour, including parliamentary assistants to the Minister of Labour, in the past that in many Steelworkers collective agreements we have already negotiated the right to refuse. I want to put it on the record this time with a little bit more detail for the purposes of making sure that at least the Liberal and Conservative members who do not want to understand this will hear it clearly.

In our collective agreement it says that the worker inspector has the right to assess “hazardous conditions or practices, directing workers in correction or discontinuation of unsafe practices,” in item six of the job description. It goes on to say that he “follows the code of practice; directs the stoppage of work immediately necessary to ensure worker safety and health (including environmental concerns) and promptly reports same” to his supervisor, and then corrective action will be taken. For the purposes of making

sure that this is once and for all communicated to the minister so that he either quits deliberately misleading the public or that somebody properly briefs him, I would like to circulate this to the committee.

Members of the committee, for the last four weeks the standing committee on resources development has been hearing from workers, employers and employer associations across Ontario about far more than simply a piece of legislation which amends another piece of legislation. This committee has been hearing deeply felt opinions about one of the most important human issues imaginable. That issue is, to what extent must an ordinary working person place his or her health and life in peril simply by doing a day's work. It is more important than how many cars you produce, let me tell you.

It is important that we all appreciate this, the fundamental moral simplicity of what this exercise is all about. The stacks of briefs, the technical arguments about what types of committees work best or what structures of agencies are most effective, the time-honoured crying and complaining about what it all costs by employers, those are all debatable matters. But it is also very easy to get lost in it by competing technical and political arguments.

It is much too easy, I would add, to lose sight of the basic, shameful fact that brings us together in this room. That is the fact that in world-class Ontario, hundreds of workers die by industrial accident, thousands die of industrial illness and hundreds of thousands are maimed and injured on a regular basis. I would add that that means the snuffing out of life of healthy young people and hardship to their families.

Let me say that for me the issue of workplace health and safety is deeply personal. My family's history is checkered by workplace accidents and even death. My father's own death a year and a half ago was the result of the cumulative battering and poisoning his system absorbed for many, many long years as an underground miner.

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For my union the issue of health and safety is also personal, if that word can be applied in an institutional way. The self-image of the United Steelworkers, the way this union looks at itself, is in large measure defined by our militant record on behalf of the health of our members.

While we are proud of that record, proud of our role in prompting the creation of the Ham commission after an illegal strike by more that

5,000 Elliot Lake workers, of winning recognition for gold miners' claims in cancer, of countless other breakthroughs; it is not a record or a self-image we would have chosen freely. Rather it is part of our union's life because of the nature of the work our members do in mines, in manufacturing facilities, in offices, in factories, in steelmaking and steel fabricating. Our members look danger in the face daily and they look to their union for help.

Our historical advocacy on health and safety is not based only on the types of work our members perform; it also has a lot to do with the kinds of employers we face. Let me cite one telling example, but it can stand for many others and many other employers. The smooth, self-satisfied—dare I say aristocratic and arrogant?—presentation made by Stelco Inc before this committee on 15 January could easily mislead the uninformed into thinking that all that contract language cited in the appendix of the brief somehow dropped from the sky.

I trust the committee understands that those health and safety clauses in our agreement with Stelco, the complex structure of joint committees, the training, the meetings and the inspections have absolutely nothing to do with some kind of corporate mission statement on safety. They are the result of the most basic bargaining table struggles and generations of shop-floor activism by committed rank-and-file members, their local union leaders and their union. Those struggles continue at Stelco right up to today, as many of you heard about the recent 3M debate.

In fairness to Stelco, though—and I always like to be fair to Stelco, I should add—it is not the only employer that chooses to forget the roles its workers have played in forcing it to clean up its act. That seems to be a common management evasion, especially after hearing some of the briefs today. But it makes a mockery of their repeated complaints of costliness and bureaucratization which they all recycle whenever some level of government talks about new safety or environmental laws. Let me tell you, we have heard it all before.

To put Bill 208 into perspective, I wanted to open in a deliberately personal way to underline what Bill 208 and that controversy means for us in the labour movement and to help put that meaning in context.

It is our conviction in the Steelworkers that the Minister of Labour (Mr Phillips) and, through him, the provincial government have acted in bad faith in the handling of this legislation, particu-

larly with respect to the ludicrous amendments introduced last October.

It is our further conviction that these amendments in themselves represent a capitulation to private business as complete and abject as any surrender ever made during the previous Conservative dynasty. You have all seen copies of the letter that the Canadian Manufacturers' Association sent to tell the Premier (Mr Peterson) which levels to push and how high to jump, and he jumped. How else does one explain the about-face in both substance and process that occurred when one Labour minister was replaced by another?

Our union joined with the Ontario Federation of Labour in qualified, constructively critical support of the original Bill 208 introduced in January 1989. For much of the previous year our union was involved in consultation which canvassed the issues and priorities addressed by the bill. None of it was particularly congenial. Indeed, as the committee knows, there were voices and are still voices within labour that want nothing to do with the original Bill 208. But the Steelworkers union and the Ontario Federation of Labour understood the progress represented by Bill 208 and maintained the dialogue with the ministry in the midst of the most difficult circumstances, the swirling controversy over the regressive changes introduced into workers' compensation by Bill 162.

But everything changed once the new Minister of Labour assumed his post. The consultative dialogue with labour was set aside and a set of amendments proposed which clearly demonstrate that the minister's real attention had been given to the employer fearmongering. That is the context of bad faith within which we stand today. I will return to it later, because it has continued to pervade the Bill 208 debate right up to the present.

Let me begin with the issue of the Workplace Health and Safety Agency. The issue has been endlessly argued in front of this committee in terms of bipartism versus tripartism. Again, let's be clear about the real world, human context of this debate.

The real issue is safety and health training: the content of training, its design, its quality and its delivery. In appendix A, I have attached a group of coroners' reports on accidents that killed five steelworkers—and incidentally, one of those steelworkers was at Gerber—in five different workplaces in the past year and a half. These reports highlight the training issue in the most brutal possible way. They talk about what should

have happened. Every one of those reports talks about the inadequacy and even the absence of appropriate safety training in that particular workplace.

To the extent that the agency could have been the means to research, consolidate, design and deliver the needed training, we were initially prepared to give the idea our qualified support. We needed to be sure above all that such an agency would have our confidence—much unlike the present safety associations which do not have our confidence and which, we would suggest, waste \$47 million of the taxpayers' money every year—and reflect the genuine safety imperatives thrown up by the workplace.

The ministry's amendments guarantee that our confidence would have been misplaced. Mr Phillips' lame argument that the so-called neutral chair is required to prevent the two parties from digging in their heels is, with respect, insulting.

At this point, a diversion from the presentation: I find the real contradiction in the ministry's position is that it seems to be continuously insisting that labour needs to have a neutral chair at the bipartite agency, yet it is continuously insisting that we should have the internal responsibility system and that local committees should be made up equally of labour and management. I would suggest to them that they cannot have the best of both worlds. If they want neutral chairs at the agency, then I suggest we legislate neutral chairs in every health and safety committee in the province. If we do not need health and safety neutrals at workplace health and safety committees, then we God-damned well do not need them at the top.

Simply put, it is in our most profound interest, and it should be in the employers' interest, to make the bipartite structure work. Need I cite the coroners' reports again? In fact, by imposing a neutral chair and effectively eliminating bipartite discussions, the amendment removes or side-tracks the direct responsibility of the workplace parties, rather than mediating that responsibility. The minister would profit from reviewing some of his predecessor's notes and speeches on this topic.

The neutral chair amendment flies in the face of all the consultative discussions this government held with labour in 1988 and 1989 and fits nicely into this minister's newly adopted posture of bad faith. A full and thorough debate on just what such an agency might accomplish, as originally conceived, has been effectively blindsided.

But breaking faith did not stop there. The original Bill 208 made a useful attempt to catch up with the practice, jurisprudence and common sense of the ministry's own expansive and flexible interpretations of the right to refuse unsafe work. The facts of injury due to repetitive actions, the unwise lifting of awkward and heavy loads, working with poorly designed equipment and other activities have been acknowledged in many Ontario Labour Relations Board decisions as legitimate judgements of unsafe work by safety-conscious workers.

Accordingly, no one conversant with the exercise of the right to refuse would quarrel with the proposed inclusion of "activity" within the statute; it simply reflected common sense. So the new amendment restricting the interpretation of "activity" to an imminent danger or a threat is particularly wrongheaded.

It not only puts into question over 10 years of practice of the right to refuse—and no one has ever convincingly suggested, by the way, not even GM, that the right to refuse has been misused—it constitutes a restriction that had been already rejected prior to the passage of the Occupational Health and Safety Act in 1979. Bill 208 as amended would constitute one step forward and two steps backward on the issue of the right to refuse and we reject it.

As our workplaces evolve and the individuals grow rightfully more conscious of their physical wellbeing, ergonomic issues will continue to grow in public profile. But gutting the right to refuse in the manner proposed reduces the incentive of employers to pay close attention to questions of dangerous and unhealthy workplace design. Again, an opportunity for innovative public policy has been shelved by the government's bad faith.

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But from the Steelworkers' point of view, nothing is more bewildering than the hysteria of the employers and the outright capitulation of this minister on the issue of a certified member's right to shut down an unsafe operation. As I pointed out and circulated, the right to shut down unsafe work, unsafe operation, even for environmental reasons, has been part of our collective agreements for more than 10 years.

Contrary to the deliberately misleading employer propaganda, the concept of certified members and carefully delineated rights to halt unsafe operations are not radical or other-worldly leaps into irresponsibility. As this committee has already heard regarding some of our own collective agreements, and particularly we docu-

mented it again in appendix C, comparable responsibilities and rights already exist in practice.

I again state our personal disrespect to this minister for his continued denial of these facts, as reported in the 5 February *Kitchener-Waterloo Record* and again last week in the *Kingston Whig-Standard*. We bargained hard to win the position of worker inspectors in many of our locals. In the uranium mines in Elliot Lake, the right to shut down is written into the worker inspector's job description, as I pointed out.

A close examination of these concepts and how they actually work in Ontario should have been carried out as part of the research behind the preparation of legislative language. In any event, the labour movement welcomed the opportunity to debate, explore and expand on those concepts after Bill 208 was first introduced. But once again, meaningful, constructive debate has been foreclosed by amendments that gut the intent and purpose of the right to stop work.

Again, differentiating between good and bad employers as a gauge to determine where this right should apply is truly bizarre. A serious accident or hazard will injure a victim no matter what the previous record of the employer was in the workplace. A stop-work right cannot in justice be applied on the basis of relative statistical probabilities; one major preventable accident in a good workplace will blow that kind of thinking right away. This government should have had and should have more foresight.

A functioning, universally applicable right to stop work is crucial to the working application of the internal responsibility system. It poses no threat to employers, especially as it was contemplated as an exercise against the advice of labour and is limited to specific trained individuals who, incidentally, are under threat of decertification if they act in bad faith. We suggest to you that that threat of decertification should be eliminated and must be removed to give certified workers a real right.

In our view, the right to halt unsafe operations, like the right to refuse work, is tantamount to a basic human right that should be available to all working people. Let me also suggest that its application can best be limited not by legislative restrictions on its use, but by providing those same certified members with the additional right and responsibility to issue interim correctional or improvement orders, which stop short of stop-work orders, when unsafe situations emerge. The right to stop work should be complemented and underpinned by a right to issue provisional

orders. A safe workplace would be the only result.

In the interests of time, we have chosen to focus on these three broad issues of the agency, the weakened right to refuse and the almost meaningless right to stop work. But the District 6 health and safety committee, which did most of the thinking for this brief, is thoroughly aware of the various subissues contained within each area I have discussed, as well as the additional questions addressed by Bill 208. Let me just briefly canvass a few of them.

We oppose the minister's intention to allow the safety associations, under the scope of the proposed agency to determine their own bipartite representation on their boards. The potential for abuse in the form of worker representatives who represent nobody is only too real, judging from some of the admirable concerns we have heard from employers about unorganized workers.

We suggest the bipartite agency, as envisaged in the first Bill 208, be empowered to determine the rules of representation for all boards receiving funding from the agency, just as it should be empowered to provide appropriate separate resources that are not subject to bipartite boards, to both workers and employers in the interests of confidence-building.

Additionally, there is no argument whatsoever to justify the exclusion of labour representation on the proposed unique association for small business. In fact, we believe there is no need for the proposed unique association for small business, but should it come about, we must have equal union representation on that unique association.

Confidence in the system, let alone safe work habits, demand that workers must not face any financial loss for exercising their right to refuse, or their right to stop work, or for instances in which they are affected by anyone else's exercise of those same rights.

The credibility of certified worker members depends on their being chosen by, and therefore accountable to, their fellow workers or union. Certified members must be required to investigate all safety complaints; if left to the individual's discretion, space opens up for employers who may attempt to influence judgements. For similar reasons, one certified member must not be allowed to overrule another, as appears to be possible under subsection 23a(6). Again, the scope for mischief by employers must be blocked.

Regular workplace inspections and prompt responses to recommendations from joint health

and safety committees receive only the most feeble support from Bill 208. A 30-day response period for employers makes no sense at all. Employers must be obligated to respond within seven days or seek the joint committee's agreement for extensions.

Committee members will note the emphasis on prompt compliance to safety meeting recommendations made in the coroner's report on the death of Kelder Marcelin attached in appendix A of our report. Similarly, the attached report on the death of Dino Bruno Gallina puts strong emphasis on the need for better and more regular workplace inspections. On this issue, Bill 208 is at best unclear; it appears that the complete workplace inspections are only assured on an annual basis. This is ludicrously inadequate. A minimum of one complete monthly inspection is established in many collective agreements and no meaningful argument can be mounted to keep it out of the law. Citing coroners' reports on dead workers should not be necessary for issues as basic as prompt responses to regular inspections.

In conclusion, I suspect, however, that coroners' reports will continue to play their grim role in our efforts to make health and safety laws worthy of the self-described, world-class province of Ontario. Like the railroading of Bill 162, the process of alleged consultation on Bill 208, followed by the new Minister of Labour's ridiculous amendments, demonstrate an over-arching bad faith towards the working people of this province and towards their organizations.

That bad faith has been compounded regularly in many ways: when a government member of this committee attacks the credibility of a worker at Gerber whose co-worker was killed on the job, or when the Labour minister himself denies knowing about some of the most important safety contract language in this province. Those sorts of things are remembered for a long time.

For their part, the employers' submissions in the last month before this committee, their misrepresentations and in fact their arrogance have reinforced our impressions about where our members, their employees, stand in the hierarchy of values, and let me say it is not at the top.

This entire exercise could have been a productive, stimulating, even exciting little chapter in the development of safety law in this province. It might even have advanced the minister's self-proclaimed desire to develop the partnership between employers and labour. But I submit, on behalf of our union, that the context of pervasive bad faith in which these hearings have taken place has done incalculable damage to any

trust we might have placed in this process. What we have heard from the employers we deal with has nothing to do with the improving of the relationships with them, quite apart from the minister's fantasies. You on this committee have the chance to make the changes needed to repair the damage that has been done.

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Let me state unequivocally that for our union's part, we will continue to make the health and wellbeing of our members our highest priority. We will do whatever it takes in the legislative arena, at the bargaining table or in the streets, legal or illegal, to win the rights those men and women expect from a decent society.

The Chair: Thank you very much. Your timing is indescribably exquisite. I do wish we had more time, because it is a very comprehensive brief and there is a lot in it on which members could have a good exchange with you. But I know that it is not possible to do a very comprehensive brief and allow time for an exchange with the members. We do appreciate that. There is not time for an exchange with members. There is a point of order.

Mr Dietsch: I would like to clarify a point that has been made.

The Chair: Perhaps to correct the record.

Mr Dietsch: Yes, and I think it is one that was describing myself within Mr Gerard's brief which I, along with all of you, thought was thought-provoking, to say the least.

I would like to say that I am appreciative of the fact that Mr Dopke is before us today, and I recognize we do not have the time, but I would like to indicate that my information tells me that the points I raised at other hearings in respect of the Gerber death were certainly ones that—I said there was confusion that centred around it. The reason for that confusion on my part was based on the information I have that says that the joint health and safety committee member and the management representative stated that the alleged work refusal was not reported to them prior to the assignment of Mr Gallina's participation.

In reading the inquest note, I recognized that, as I did before, that is quite a probable situation based on the fact that Mr Dopke was a member of the health and safety committee but, as the inquest note outlines, was not aware of how he should proceed under the act. But I think there has been confusion centred around it and I wanted to correct the record from my perspective. I appreciate the opportunity.

Mr Gerard: In that regard, Mr Chairman, let me make it absolutely clear that Mr Dopke refused and communicated that refusal to his foreman. Had that foreman known what his obligations were under the act and had we had Bill 208, the communication of Mr Dopke's refusal would have had to have been made to the worker who ultimately died. It is not too important that the foreman did not communicate it to his boss. What is important is that the foreman did not communicate it to the next worker who was asked to do the job. That is what is important.

The Chair: Once again, on behalf of the committee, Mr Gerard, thank you for your presentation this afternoon.

[Interruption]

The Chair: The next presentation is from Tourism Ontario. I would ask people who are either conducting interviews or having conversations to do it elsewhere. We want to hear from the next presentation. Gentlemen, welcome to the committee this afternoon. I think you know the ground rules, that the next 30 minutes are yours. I hope you will not take it personally that the room is not as full as it was a few minutes ago. Welcome to the committee. If you will introduce yourselves, the next 30 minutes are yours.

TOURISM ONTARIO INC

Mr Stanton: On behalf of myself, Bruce Stanton, the chairman of the labour committee of Tourism Ontario and my colleague Roly Michener, the president and chief administrative officer of Tourism Ontario, I would like to thank the chairman of the committee for hearing our comments and concerns today on behalf of the tourist industry of Ontario. I would like to start by giving a brief background. We have circulated our written brief, which I will basically read through, not verbatim, but on certain key areas I will do so. Feel free to follow me through it.

To start with, I would like to indicate that Tourism Ontario is a private, nonprofit federation of lodging, recreation, transportation and travel associations. We represent more than 7,000 member businesses throughout the province. All the comments you will hear from us today are fully supported by the member associations which are indicated in our brief, as from our chairman, Peter Elmhirst.

In addition, to give some background on our industry and the scope of our industry, tourism and hospitality is the province's largest private sector employer. We account for close to 500,000 person-years of employment, almost 10

per cent of Ontario's employed workforce, and we are also one of the largest employers of women, youth, visible minorities, part-time, casual and seasonal workers. In addition, there are numerous permanent, upwardly mobile positions for professionally trained service staff, college and university educated people.

To give you some idea of the nature of the hospitality and tourism business, I think I should point out that most of our businesses are quite small. They tend to be family owned and employ, in most cases, fewer than 50 workers. In many cases, most owners and staff people work side by side, sharing duties and responsibilities. That is more the rule than the exception. In the majority of businesses, positions are sometimes difficult to define and tend to be fluid, with management and staff, as I mentioned, working in interchangeable functions throughout the day.

The essence of our presentation really falls along the lines of our concern about continuing good service and good co-operation between employers and employees in the tourism and hospitality business. Good service, goodwill, professional hospitality are all essential elements in making tourism competitive in the 1990s. The absence of or noticeable decline in any of those elements inevitably will lead to consumer rejection and, ultimately, business failure. Let me say that the results of some of the latest external factors affecting tourism are already starting to take their toll in this regard.

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We are a very labour-intensive industry, as I already described, where positive staff attitude tends to be the cornerstone of any growth. For that reason, we have to have mutual respect and co-operation, and that can only be fostered and maintained in a good relationship between employers and employees. Above all, we feel very strongly that owners, managers and staff people share a duty of care in the prevention of workplace accidents and the maintenance of a safe and healthy workplace.

Tourism Ontario believes that Bill 208 is a seriously flawed piece of legislation which, unless substantially amended, will disrupt the co-operative partnership that I described and the trust that has to exist between management and labour in creating and maintaining a healthy and safe workplace.

Tourism Ontario and our member associations have worked very hard during the past few years to create a safer and healthier workplace in our industry and to foster the kind of relationship that I have described.

In January 1988, two very significant steps were taken by our industry to enhance workplace safety and to measurably reduce work-related accidents and injuries. The first was a three-year new experimental experience rating program, NEER for short, which was designed for our industry and introduced for all employers in the two large rate groups affecting hotels and restaurants; the second was the introduction of a five-year tourism and hospitality industry health and safety education program, the two of which were intermingled, as far as we were concerned. In order for tourism operators, who up until this time had perhaps not acknowledged their responsibilities for health and safety—we felt that if they were going to do an effective job, they would need the tools to do it. Hence, THIHSEP for our health and safety education was inaugurated.

Since the inception of THIHSEP, our health and safety education program, management and labour have been represented on our advisory committee and have both lent their respective volunteer knowledge and talents to the productive partnership and development and delivery of quality occupational health and safety education, training programs and accident prevention strategies.

The results of our joint management-employee efforts since the advent of THIHSEP and the introduction of the NEER program have been most encouraging. The THIHSEP initiatives, coupled with NEER, have resulted in more than 80 per cent of businesses covered in those two rate groups receiving significant employer assessment premium rebates for their good health and safety records. At the same time, of course, more than 20 per cent received hefty surcharges for poor health and safety performance. So in reality what we have is a fair distribution of the costs of accidents in our industry. Further, the frequency of lost-time accidents and injuries, particularly in the restaurant sector of our industry, has declined noticeably since the advent of these programs.

Now we get to the part where we do have some concerns about the two programs that I have mentioned. While the Ontario government and our industry are both committed to the common goal of enhanced workplace health and safety through direct employer incentives, recent actions by the Workers' Compensation Board regarding the NEER program and THIHSEP have created some barriers.

WCB just last year arbitrarily and without prior consultation imposed a new formula for NEER. The new rebate balancing formula is a

major embarrassment to our federation and not one which we negotiated in good faith. Further, although our federation and our industry partners were prepared and committed to assume full financial responsibility for THIHSEP this year, in 1990, through the direct increase in assessments on WCB—in fact, we were preparing to make application to the WCB to formally establish THIHSEP under section 123 of the Workers' Compensation Act. We have been prevented from doing so until the introduction of Bill 208, that which we are discussing. As a result, WCB, at its board of directors meeting on 2 February, approved restricted financial assistance to THIHSEP on a contingency and interim basis for the balance of this year at the risk and expense of some of its programming and outreach initiatives. We ended up with a watered-down program.

Our industry is angry and frustrated that the efforts, in both cases volunteer efforts, on the part of industry and representatives of labour to improve the co-operation and partnership in our industry between employers and employees, particularly concerning health and safety issues, have largely gone unnoticed by the government, and largely due to a focus on Bill 208.

With regard to the bill, our federation and our members firmly believe that effective and contemporary occupational health and safety practices cannot and should not be rigidly legislated or regulated. Safety professionals in this industry concur. Health and safety is an attitude in the workplace, an attitude that has to be properly educated, trained and endorsed by both employees and employers. That is the direction that Tourism Ontario would like to take it.

Confrontation, intervention and bureaucratic red tape imposed by a legislated process will only polarize management and labour dissent and mistrust at the expense of labour-management co-operation, productivity and joint efforts to improve risk management processes and procedures in the workplace.

Bill 208 fails to recognize that preventable accidents occur in the workplace because of management and worker carelessness, negligence, apathy and ignorance. The duty of care, as I mentioned earlier, prevention and accountability are the responsibility of both parties.

We are totally opposed to the provision in Bill 208 which would empower a certified worker representative to unilaterally shut down a workplace if he or she believes that a working condition is unsafe. The right to refuse work

which is deemed to be unsafe without unfair employer reprisal is already available and enshrined in current occupational health and safety legislation.

Decertification of a certified labour rep who unilaterally stops work for nonlegitimate reasons would be, in our opinion, an insufficient and inadequate penalty for such action. Financial losses to employers due to such action could readily amount to tens of thousands of dollars and should be recoverable from the certified labour rep through clear amendments to Bill 208.

Furthermore, a dangerously unsafe work situation identified by a certified employee safety rep should require immediate consultation with supervisory staff or the certified management rep. Failure to resolve differences of opinion on preventive safety measures should then require that a properly trained, qualified and certified Ministry of Labour representative be contacted and required to respond immediately.

With regard to the Workplace Health and Safety Agency, Bill 208, as presently drafted, would effectively disfranchise 85 per cent of the labour pool that is currently in our industry that is not unionized. Further, more than 70 per cent of the provincial workforce who have legitimately not chosen to be represented by unions would likewise be disfranchised. This completely undemocratic tenet of Bill 208 must be changed to reflect the relative percentages of unionized versus nonunionized workers in Ontario.

Referring to our own health and safety agencies and others, to suggest that there are insufficient competent, qualified and independent nonunion employees from throughout our province who can serve on this agency is an outright insult to many thousands of Ontario workers. Candidates for nonunionized seats on the agency can readily be found in joint health and safety committees and in nonunionized workplaces. Further, no less than 40 per cent of the active agency employer reps should come from small business, especially with regard to our industry.

We applaud the Minister of Labour's proposal that the new agency be chaired by a neutral individual and that four professional experts in the field of occupational health and safety be added to the agency board. We would strongly recommend that these professional appointees be granted full voting powers.

The minister and the Ministry of Labour are and should continue to be totally responsible for workplace health and safety enforcement and regulation. These functions should not be the

prerogative of either the proposed Workplace Health and Safety Agency or the certified labour reps on joint health and safety committees. The agency should serve as an accreditation and advisory body for all the occupational health and safety training courses and clearly there is a large role there to be filled.

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As we indicated earlier in this submission, employer-employee partnership and co-operation have worked well in tourism and hospitality and in our safety education program. We must insist that the operational autonomy be maintained for our safety association and all others, free from the intervention of Bill 208. The agency should have no right to alter the rules of operation or to change the organization of any existing safety association, just as it will not have the right to do so in the case of the workers' centre.

With regard to the mandatory election of health and safety committees, in the tourism hospitality industry we have a problem. The problem is because of the demand for the businesses that make up our industry. The difficulty is that many of our establishments are seasonal and only require part-time workers, students for the most part. Workplace duties and responsibilities are often unstructured and shared between owners, their families and relatives. Thus the mandatory election of employee health and safety reps would be unworkable and impractical in most of our businesses.

We strongly and respectfully recommend that all seasonal businesses in our industry, regardless of size, and all businesses otherwise employing fewer than 50 full-time workers be exempted from the mandatory election provisions in the bill.

We support the proposal of the Minister of Labour to remove the requirement for a written health and safety policy for workplaces with fewer than five employees. We disagree, however, with the search, seizure and document retention powers that would be newly vested in the Ministry of Labour's inspectors through Bill 208.

With regard to medical surveillance, we fail to understand how employers could establish medical surveillance programs if they cannot access the results of medical examinations of and tests on their employees.

With regard to association funding, our federation and our industry do not believe that any agency of the government, including the proposed Workplace Health and Safety Agency,

should be empowered to arbitrarily determine what level of annual funding should be made available to provincial safety associations. Our industry is prepared to assume direct financial responsibility and accountability for THIHSEP through assessments to our WCB payroll and so on.

In conclusion, as we stated at the outset, our federation and our members fully share and support the government of Ontario's objective to promote and maintain safe and healthy workplaces. This can only be sustained, however, through employer-employee co-operation, partnership, trust and a commonality of purpose in risk management, training and education. There is no place for the confrontational and interventionist tenets of Bill 208, but rather co-operation, training and education.

The Chair: We have people who have indicated an interest in asking you some questions.

Mr Mackenzie: The question does not relate directly to your brief. It probably would not surprise you to know that I have some difficulty with your particular position. But the question I have is that I would like to know if you can confirm whether or not THIHSEP—that is the safety organization you have set up, Tourism Ontario—whether or not McDonald's restaurants refuse to participate in your particular safety program and organization.

Mr Stanton: Unfortunately, I do not have the information to confirm or deny what your suggestion was.

Mr Mackenzie: My information is that they did and I was just trying to confirm it.

Mr Michener: We have no such information.

Mr Mackenzie: Could you find out for us whether or not McDonald's is part of your program?

Mr Michener: Part of THIHSEP?

Mr Mackenzie: Yes.

Mr Michener: Well, let's put it this way. We do not manage it currently ourselves. OHSEA manages it on our behalf. The programming that is produced through THIHSEP is available to all employers in the industry.

Mr Mackenzie: It is a relatively new one and I would imagine you would try to bring the employers in Tourism Ontario and the hospitality industry on side. It should be fairly easy, I would think, to find out whether or not they are participating or have participated.

Mr Michener: It would be something that OHSEA could probably better tell us, and the people who are actually actively managing the program for us, but we just cannot answer that at this point in time.

Mr Mackenzie: I am wondering whether we can check it through OHSEA. I would like to know whether that is in fact true.

Mr Stanton: I will say, if I can, that McDonald's, because it supports and pays WCB rates in the restaurant and food and beverage service category, is required to co-operate in the NEER program that was mentioned before, which is a fair means of distribution of the cost of accidents. We will get that back to you if we can, Mr Mackenzie.

Mr Mackenzie: Thank you.

Mr Carrothers: I have a question on maybe just sort of a small point. In here you have talked on page 13 about the mandatory election or at least the method for choosing the health and safety representatives. I guess strictly speaking Bill 208 just says that the employees shall choose. I do not think it says there has to be an election or anything like that. I guess over and above that I just want to get a better understanding of why you feel that would cause such a difficulty.

My own sort of managerial experience leads me to feel—what I would do, and did was sort of suggest to the workers in the workplace, "Choose somebody to speak to this issue," and they would. I would not have thought to operate otherwise. I guess I would not have felt that they would have felt comfortable with what happened if they had not chosen the person, if you know what I am saying.

I guess then I am trying to better understand why you feel it is a problem that we simply state in the legislation that they should choose that person. That person is after all going to speak for them, and you would, I assume, want that person to be credible back to the workers in the workplace in the first place.

Mr Stanton: No question; there is nothing more that we would like than to have proper representation and interest in health and safety. The problem comes in when we have particularly a seasonal property where the staff and the employees are typically students or local residents who are there for a very short time, and quite frankly the interest they would have in that is quite minimal.

In all probability, even trying to get them to co-operate—for example, I know from firsthand

experience in the past with co-operation in first aid training that it is like pulling hen's teeth to get them to actually co-operate, because they are there for a short time, they are youthful, they are interested in getting back to university come Labour Day. The reality of many of the seasonal resorts is simply that. So by polling the question to them as a whole, then simply would be virtually no response, if any.

Our suggestion was to perhaps leave it at the discretion of the managers of seasonal properties to certainly comply in essence with the health and safety obligations they have, but leave it at their discretion to perhaps select for themselves someone who can work in that area or who may have an interest.

Mr Michener: Obviously they have to have the respect of their co-workers if it were to work.

Mr Carrothers: You would hope that is the case. What I hear you maybe saying is some sort of fallback mechanism that if the employees could not choose, some other mechanism be there.

Mr Stanton: Sure. That would be fine.

Mr Wildman: Could you tell me first what OHSEA stands for?

Mr Michener: Occupational Health and Safety Education Authority of the Workers' Compensation Board.

Mr Wildman: Okay. THIHSEP you indicated involved worker representatives. I am referring to page 11 of your brief where you indicate concern for proper representation for independent, nonunion employees in the agency as it is constituted. Could you tell us, since you have started THIHSEP, how many nonunion people you have represented in the administration of that program, that is, on the board, running it?

Mr Michener: Sure. There are 14 representatives on the advisory committee, of which three represent organized labour, one from OHSEA and two from two large unions in our industry. On the other side of the ledger, there are three of the balance who represent unorganized labour. They are employees of businesses in the industry and they serve in a voluntary capacity.

Mr Wildman: Okay. My concern in following up with Mr Carrothers's questioning is that all of us around this table are selected—if you want to use that term as opposed to elected—by

people in this province to represent them. Some of us are elected by a majority of the people in our constituencies. Others are elected by a minority, but once we are elected, we are supposed to represent, as best we can, all of them.

My question is, it seems to me that if you are selected, to use your term, by management, then you represent management, not workers; if you are selected by workers, then you will represent workers.

Mr Michener: Do you appreciate concern that we have as employers of a lot of seasonal workers in basically unstructured workplaces, for that kind of situation? As Bruce Stanton explained, it is difficult to get a commitment from those types of workers—seasonal, casual, part-time workers—to much more than a good day's work because they know they are only there short-term.

Mr Stanton: If I could add something with regard to that question, I think it has been our intention with THIHSEP from the initial proposals under Bill 208 to provide a makeup on our advisory board that would properly reflect interest from the worker community. We feel that could be done, not by selection through the actual manager of an establishment but rather through, for example, the existing trade association network, which would have an unbiased, not management affected at all ability to select people who could properly represent different areas of workplaces in the tourism industry.

I do not think we would go to the employers and say, "Hey, pick one of your workers to sit on our advisory board." That would not be our intention. We are just crossing that bridge now. It is certainly our intention to do so. The advisory board, in its initial state, was basically a group of volunteer business people who had an interest in health and safety and had basically put that in place, and it is our intention to comply with that facet of Bill 208. We think it is very good.

The Chair: Mr Stanton and Mr Michener, we thank you for your presentation this afternoon.

I would like to thank members of the committee for their tolerance and good humour during the day. We stand adjourned until 10 am tomorrow in committee room 1, at which time procedural motions will be entertained.

The committee adjourned at 1713.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Fleet, David (High Park-Swansea L)

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Lipsett, Ron (Grey L)

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McGuigan, James F. (Essex-Kent L)

Miller, Gordon I. (Norfolk L)

Riddell, Jack (Huron L)

Wildman, Bud (Algoma NDP)

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Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mrs Marland

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Kenny, Wallace, Vice-Chairman, Employee/Employer Relations Committee

From the Oakville and District Labour Council:

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Castleman, Leah, Executive Board Member, Ontario Public Service Employees Union

Bishop, Larry, Representative, Canadian Labour Congress

From the Retail Council of Canada:

Woolford, Peter, Vice-President

Mitchell, Don, Director, Occupational Health and Safety Services, Oshawa Group Ltd

Crisp, David, Vice-President, Human Resources, Hudson's Bay Co

From Ontario Hydro:

Popple, R. T., Director, Health and Safety Division

From the Canadian Auto Workers, Ontario Workers Health Centre and Canadian Union of Public Employees, Local 1344:

DeCarlo, Nick, President, CAW, Local 1967

Dias, Jerry, President, CAW, Local 112

Gray, Stan, Director, OWHC

McDonnell, Gerry, President, CUPE, Local 1344

From the Canadian Retail Hardware Association:

Ross, Tom, Executive Director

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Goodfellow, Howard, President

Fliegl, Rudy

From General Motors of Canada Ltd:

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From the United Steelworkers of America:

Gerard, Leo, W., Director, District 6

From Tourism Ontario Inc:

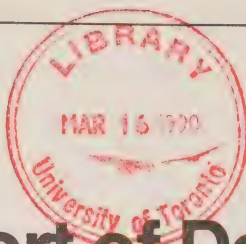
Stanton, Bruce, Chairman

Michener, Roly, President and Chief Executive Officer



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Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Resources Development

Occupational Health and Safety Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Thursday 15 February 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 15 February 1990

The committee met at 1012 in committee room 1.

OCCUPATIONAL HEALTH AND SAFETY STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Chair: The standing committee on resources development will come to order. I regret that I think because of the weather one of the parties is not present, but I think the party would not object if we proceeded since we are not debating clause by clause at this point and there will be no votes taken, I would assume. We will continue our examination of Bill 208. I expect we will have some changes in the scheduling today because of the weather and the road conditions, but we will play that by ear and do the best we can.

I believe the first presenter is here, the Amalgamated Transit Union, Local 113. Am I correct? If you would come to the table, we can hear your presentation. If you would introduce yourselves, we will set aside the next 30 minutes to hear from you.

AMALGAMATED TRANSIT UNION, LOCAL 113

Mr Jones: My name is Richard Jones. I am the assistant business agent in transportation in Local 113 and I am also on the senior health and safety committee for the health and safety of the workers of Local 113.

Mr Wehr: My name is Dieter Wehr. I am a health and safety committee member with the same local and I will be making the actual presentation today.

The Chair: Whenever you are ready, we are.

Mr Wehr: The Amalgamated Transit Union, Local 113, is pleased to be appearing before this standing committee to address our concerns and provide our comments on Bill 208, an act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

Over 10 years have passed since any major amendments have been made to occupational health and safety in Ontario. In the 1990s certain

groups of workers are still facing unfair exclusions and therefore risking their health at work. Bill 208, in the legal interpretative sense, is as yet not clear enough, considering the past experiences with the current Occupational Health and Safety Act. Properly defined terms and language, without the present loopholes, are needed to eliminate those conflicts.

The proposed amendments contain major flaws and do not correct many of the problems that have shown themselves with the use of the 1979 version of the Occupational Health and Safety Act. It is extremely disappointing that the language in Bill 208 is limited and therefore does not provide many necessary improvements to the present legislation and the protection of workers in this province.

We are also troubled with the possibility that organized labour might not have an equal voice through equal representation within the framework of the agency. For the benefit of all workers in the province of Ontario, organized labour, as the only group fighting for all workers' rights, needs to have a meaningful participatory role.

Some of the new proposals pertaining to the internal responsibility system will be welcome news to the worker members on joint health and safety committees; some will not.

It has been our experience that committees headed by two co-chairpersons who are well educated and informed on matters of occupational health and safety function better. Paid preparation time will help workplace committees to properly address health and safety concerns. Paid-for appropriate training of certain members of a committee, if not all of the committee, will create a safer workplace in years to come.

Currently, other than to comply with the workplace hazardous materials information system, little or no training in the form of education is provided by management in the area of health and safety. Workers receive their education paid for by the union or out of their own pockets. The Workers' Health and Safety Centre has been and is an invaluable resource in developing and delivering high-quality, job-specific education programs. This current body of concerned, dedicated and motivated people must be maintained at all cost. Many employers will then be

able to draw on their programs and expertise, keeping the employers' costs at a minimum.

The concept of certified committee members is a step in the right direction. It has been our experience that large corporate management structures containing several autocratic departments or sectors do not always function for the benefit of workers. Whether through lack of leadership or communication, the chance of a worker's health and safety being jeopardized is great. Stall tactics and personal gain sometimes impact on the welfare of the worker. Decisions may be made with priority given to budgets.

If anything, the rights and obligations of a certified member should be strengthened with no repercussions from the people who are affected by the decisions made within the agency's criteria. There is also a need for an impartial appeal system within the disciplinary scope of the agency. Provisions for pay to all those affected by a shutdown would reduce hesitations in decision-making that could unnecessarily threaten the health or lives of workers. If in fact one of the reasons for Bill 208 is to reduce fatalities and injuries, then this part of the amendments must be improved. Quite obviously, only an inspector of the ministry or certified member who has shut down the workplace can without bias cancel the shutdown.

Under subsection 8(5c), the employer is given an opportunity to select the committee members representing management from outside the workplace. If, as the bill says, it is not possible for them, then the union should also have the same rights as the employer.

The wording under subsection 8(5f) leaves in doubt who chooses the worker-certified member. If this doubt is intentional, then it should be clarified that this position will be selected only from the ranks of the worker members by those members. Nothing short of that would be acceptable. All applicable changes need to be made to 8(5g).

Subsection 8(6) requires strengthening by elaborating on the word "information" to include reports, documents and other written materials. We have experienced that without the inclusion of original documentation, rather than verbal communication, the committees cannot adequately protect the safety of the workers they represent. Maintenance records or copies of such need to be included with the information available to joint committees.

Subsections 8(6a) and (6b) will now provide some structure to the documentation and the problem-solving process within the context of

the committee minutes. In the past some items have sat idle on paper or disappeared, only to be reintroduced without receiving responses or reasons for not considering the recommendations jointly forwarded by the committee. An even shorter response time of seven days would be more appropriate.

Subsection 8(8c) advocates a piecemeal approach. This is not in the best interests of all workplaces. It is acceptable only as a minimum, but a full-scale workplace inspection should be encouraged and left to the decision of the joint committee. This partial inspection is a step backwards.

Subsection 8(12) addresses paid preparation time. This will afford both components of the committee equal opportunities and should complement the functions of the committee.

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With regard to industrial hygiene and testing strategies, this union would like to extend the worker committee members' rights to be present for testing not only at commencement, but in some cases also for the duration, depending on the circumstances. This decision again should be left with the joint committee and if not resolved there, with the ministry.

With regard to the participation in prescribed medical surveillance programs, all costs, rightfully so, whether examinations, tests, travel and time, must be paid for by the employer. Workers are possibly exposed to substances, conditions or things during the work process with little or no control over such exposures.

Under clause 23(3)(ba), the term "work activity" must address the repetitive strain injuries faced by some of our members. Only then will this new inclusion become a positive step forward. As a result, fewer workers would be injured and the employers' compensation payments would be greatly reduced.

Section 24 of the act should protect workers from being abused for working in compliance with the act. Even when workers are penalized and management is found to be wrong the employer then does not face any repercussions from the ministry. It is unfortunate that this in itself creates abuse of workers' rights. The only one caught in a losing situation is the worker. Employers must be prosecuted for violating section 24 just as they should be for violating other sections of the act.

Subsection 26(2) in our opinion allows for early detection of occupational illnesses that often result in more serious consequences than physical injuries. A faster response to a possible

epidemic hopefully will reduce the danger to other workers.

The sections dealing with the powers of an inspector are now more detailed and clarified if Bill 208 proceeds. In the past it has been frustrating to get the act enforced when the ability to do so was seriously hampered by poor or non-existing wording. Unfortunately, employers with their own legal departments have taken advantage of this void in legislation.

In subsection 28b(1), section 24 of Bill 208, an inspector is able to retain evidence. Unfortunately, certified members do not have these rights or part thereof. Copies of original documentation would be a great asset to the joint committee.

The posting of orders issued under section 29 for 14 days should be considered a minimum since some orders may include longer compliance dates depending on the nature of the problem. Orders must not be withdrawn without a ministry inspection.

A \$500,000 fine in our opinion is better than a \$25,000 fine although historically the current prosecutions, where fines were imposed, do not reflect a trend towards the present maximums. To window dress violations with \$500,000 fines only becomes meaningful when employers are made to answer for their gross disregard of workers' health and safety and the act. Encouragement would be generated by also imposing minimum fines.

On the topic of health records, there should be absolutely no question about confidentiality without the explicit consent of the concerned worker. We are here talking about illnesses or injuries, as a result of the workplace, that are the employers' responsibility to prevent.

In conclusion, the Amalgamated Transit Union, Local 113, believes that the 1990s offer a unique challenge. As the world more and more is becoming receptive to the voice of the people, we in Ontario can lead the way in the area of health and safety in the workplace. Rather than using watered-down examples of legislation from other nations, we should in fact be providing an example for less fortunate workers in Canada and the world. Excluding specific workforces or restricting the rights of certain workers does not accomplish this goal. The government of the day could set a fair and equitable agenda for the 1990s.

In a profit-based economy, health and safety and its related costs will always come under the severe scrutiny of those who are looking for short-term, callous gain. Local 113 has and always will fight for improved health and safety

conditions affecting our workers and the labour movement. All the negotiated benefits our members enjoy mean little to those who die or face tragedy through crippling injuries.

We are here on behalf of the workers who have entrusted us to look after their wellbeing, and the government should respect the wishes of their constituents as well. A moral commitment is what it will take. Bill 208, with some additions and no reductions in the areas where it is progressive, will lead us in that direction. Our challenge to you is that of morality, the question of cost versus life and acceptable risk versus death.

Thank you for listening and we hope you give serious consideration to our suggestions and comments. Respectfully submitted, ATU, Local 113, Toronto.

The Chair: Thank you. A number of members would like to ask you questions.

Mr Lipsett: On the third page of the brief, under item 3 and about two-thirds of the way down that item, there is the sentence, "There is also a need for an impartial appeals system within the disciplinary scope of the agency." I wonder if you could expand on your thoughts, on what you mean there.

Mr Wehr: Basically what happens now, if we are looking at discipline in regard to a certified member, or to functions as a result of a challenge by the company of the actions that the certified member took, then the agency's decision whether to decertify or whatever other penalty it would want to impose is left strictly with that agency. We think there should be an additional appeals system that would allow us the other avenue, rather than the people who are making the original decisions also being the ones who are making the final penalties stick, without appeal.

Mr Lipsett: By agency, do you mean the—

Mr Wehr: The agency as spelled out within Bill 208.

Mr Lipsett: So are you saying you do not feel that agency would be able to deal with this situation?

Mr Wehr: Right now we really do not know exactly what the makeup of that agency is going to be, and obviously that will have some relevance on that question, whether or not labour is fully represented there with an equal voice and equal vote.

Mr Wildman: Thank you, Dieter, for what really is a comprehensive brief dealing with a lot of matters in the act, and dealt with very concisely. There are a couple of things I would

like to question you on. You deal with the question of "work activity," the definition. You refer to repetitive strain injuries. Now, I imagine for transit drivers that can be a real problem, depending on the ergonomics, the position they are sitting in, the levers they have to push and pull and that sort of thing, how they have to reach for them. How do you react to the suggestion that work activity is somehow going to be limited on the basis of specific types of activity, like lifting, and the question of whether or not a person can refuse only on the basis of if the danger is perceived to be immediate?

Mr Wehr: My reaction is quite strong when I see people in their early 30s, after a few years on the job, end up with crippling injuries that become workers' compensation cases, with a lot of pain to those individual people. A lot of it has to do with ergonomic design. Some of you may not be aware that most of our vehicles that are on the road now do not have power steering. The loads those vehicles are carrying are increasing over the years, or have up to just recently increased. So there is a lot of strain there now, and more recently a lot of these repetitive strain injuries, like carpal tunnel syndrome and so on, have become evident and therefore also compensated.

A lot of these vehicles, even though now we are getting vehicles with power steering, will still be on the road for many years to come. In some conditions, especially very cold weather conditions, the gear boxes on those vehicles, the steering boxes, almost seize up. So, we have certain Flyers, like the 8400 series, where you could not drive them without breaking a wrist, and we have actually had people snap their wrists and so on in that process, which again is a lot easier to argue than having a repetitive strain injury.

Mr Wildman: You have a traumatic injury.

Mr Wehr: Yes, you have got a traumatic accident there. I think, not just there, but anything in maintenance involving power tools and so on should also be addressed, because there is a lot of new equipment, new technology out there that in fact can do away with a lot of those problems that have created repetitive strain injuries.

Mr Wildman: The Ontario Labour Relations Board has in fact recognized some claims for repetitive strain injuries. Do you think having "immediate danger" put into the act will be a step backward?

1030

For instance, if you are doing something that might cause a problem and you do it over a long period of time, how do you define immediate danger?

Mr Wehr: I think you are talking about imminent danger.

Mr Wildman: Yes, imminent.

Mr Wehr: Imminent is what bothers me, because that is a step back to where the federal legislation came from.

Mr Wildman: That is right.

Mr Wehr: Obviously we do not want to go back to what the federal government just more or less threw out. To me, that is a step backward because, in the way the definitions work, if you have been working under a brick that is hanging from the ceiling for 10 years, it is no longer a reason to refuse because it is not imminent.

Mr Wildman: It would only be imminent when it started to fall.

Mr Wehr: When it actually falls, yes. Then you would run for your life.

Mr Wildman: The only other question I have is, you spoke mainly to Bill 208 as it is now drafted. Are you aware that in March 1989, not long after the previous minister, Mr Sorbara, introduced Bill 208 at first reading, the president of the Canadian Manufacturers' Association, Mr Thibault, wrote a letter to the Premier (Mr Peterson) in which he outlined a number of changes that the Canadian Manufacturers' Association wanted in the bill to limit stop-work, change the agency structure and deal with the representation on safety associations?

He closed off his letter by saying: "I'll be calling you early next week to arrange a meeting. I hope that the changes to Bill 208 can be made before the ground swell of opposition by our members and others in the business community grows out of control."

Then in October 1989 the new Minister of Labour (Mr Phillips) got up in the House at second-reading stage and essentially announced that the government would introduce the amendments that were asked for by Mr Thibault. How do you respond to that, in terms of your members and what these changes might mean?

Mr Wehr: I have a real problem. Obviously, there is a certain bias within those recommendations by Mr Thibault. Being involved with the Occupational Health and Safety Act and its predecessor back to 1975, I found that a lot of the scare tactics and things that the employers were pushing out there or publicizing out there never

materialized with the 1979 version of the Occupational Health and Safety Act.

We have not had these mass refusals that were threatened under the minority government back in 1979, like, "How could you put the right to refuse in it?" That was the big thing, section 23.

I think if we look at the examples where some of these bits and pieces, like the designated member, were pulled out of the legislation down under, more or less, you see that they managed to work quite well with the whole package and within the framework of that. To me, again, seeing the people injured in the workplace and teaching health and safety, I find there is a real problem with the present act, without amendments, not working the way it should, because nobody is really enforcing it and the education aspects are not there within the contents of that act.

Section 14 has real limits—the employer's responsibility—and until those are tightened up, and those are some of things that will again have to be tightened up in Bill 208, we cannot have both things. If I were speaking on behalf of the employers, how could I justify not wanting to pay increased compensation payments but still justify injuring workers? There is a contradiction in terms there and obviously the two do not go hand-in-hand. You have to do one to be able to get the other.

Mr Tatham: I just wondered, what per cent of labour is organized?

Mr Wehr: In Ontario? I would have to roughly say somewhere upward of 30 to 40 per cent, in that ballpark.

Mr Tatham: Over on your second page you are saying, and I appreciate the problem, "that organized labour might not have an equal voice through equal representation within the framework of the 'agency.'"

I come from a municipality where we have a strong labour organization but also we have a number of employees who are not organized and small manufacturers who run their little show. How do we make this thing work so that we give not just big labour and big management the opportunity but also the smaller concerns that are unorganized and the small manufacturer who just goes along and works for those people, and they are almost probably more of a family than they are on opposing sides.

Mr Wehr: I see a problem and I see it several times in every course that I teach on health and safety, because unorganized workers do attend those courses out of those specific industries that

you may be talking about. The real problem is that the Occupational Health and Safety Act in the present form has really not been written for unorganized labour. The best solution to me, obviously, would be to organize them. Taking that aside, the next best solution would be that there be some very definite protections built in there for unorganized labour, which do not exist under the act now and really do not exist under Bill 208.

People may not get fired or dismissed or disciplined specifically for working in compliance with the act or its revised version with Bill 208, but they get disciplined for other reasons. I can come up with personal examples of unorganized workers to whom this has happened. In fact, when it comes to a worker asking me the same question that you are asking, I am saying that you are in a tough situation. There is very little that be done under the present situation.

In the past, the way we have dealt with that is that the ministry has accepted anonymous phone calls, but it is very unfortunate that we have to go to the extent of making anonymous phone calls to get the act enforced in unorganized workplaces so these people do not get penalized for trying to work safely under the current legislation.

Mr Tatham: The thing is that if you say 30 per cent are organized, or whatever number it is, and the great preponderance are not, how do you make that representation fair and equitable?

Mr Wehr: One way would be to do regular workplace inspections, quite obviously, of those places. The strength of the ministry is not such that this could be done at the present time, and I am talking about the inspectors' ranks. I do not know if it will ever reach those limits based on the number of workplaces that are in Ontario. Most of them are unorganized, small workplaces, small factories. Short of dealing with that right at the ministry level and therefore not having any repercussions on these unorganized people, through ongoing workplace inspections and maybe interviews or whatever at the time when that ministry inspector goes through, I do not think it is going to happen. It is unfortunate, but currently it is not happening and I do not see it happening in the future unless the ranks of the ministry inspectors are strengthened to spend their time in the thousands and thousands of workplaces that never see anybody from the ministry.

The Chair: I wonder if you would allow time for Mr Epp to have a final question, Mr Tatham.

Mr Tatham: Yes.

Mr Epp: I just want to commend you on the reasonableness of your presentation. I have one question. On the third-last page, you address the principle of fines and you speak about the trends not being for the maximums. Can you give me some indication of what kind of fines are in the norm, or some percentage?

Mr Wehr: I can use the old file figures and say so much per average worker and water it down. We have had fines that have been close to the maximum. We were at the maximum very recently, but that has not been the norm. A lot of those fines, in my opinion, came about because of the large publicity in the cases, such as the Inco situation where a number of workers were killed. Originally a worker was blamed for that and eventually the company was blamed and had to pay the fines. We get the impression that there seems to be like a package deal system out there. To a company like Inco, paying \$20,000 or \$25,000 for a dead worker or a group of dead workers is not a financial deterrent.

Mr Epp: I understand it. My only concern would be that if you are looking at the percentage of the maximum, then \$20,000 or something would be close to the percentage. If you paid 20 per cent of \$500,000, it gets to be a lot more. So with \$500,000, I would think that with regard to fines you might see a substantial jump in the kind of fines that are going to be levied against people, particularly for repeat violations or where it is an obvious violation. I would not think they were just going to jump just a few thousands; I would think they were going to jump substantially, given the legislative view that it is now a maximum of \$500,000.

Mr Wehr: The problem I see with that, quite simply, is that again the word "reasonableness" and so on shows up continuously within the legislation. Who is going to put a small company like what Mr Tatham was talking about out of business when its whole year's gross may be a small portion of that? I do not see that happening. You could kill 20 workers in a workplace like that and they may not, in fact, put them out of business. Nobody does.

1040

Mr Epp: No, but your example before was Stelco, so you have to look at those factors too. I do not want to belabour it, but I just wanted to make the point.

Mr Wehr: Historically the figures are there, whether it is Statistics Canada, or you can get them right out of the Ontario Legislature and then it has gone through Hansard. Then in fact the

fines have been a lot less, overall, than the maximums. You know, for anything else, whether it is some of the other laws that we break ourselves, through speeding or whatever, there are minimum fines for those situations. Drunk driving now has a minimum fine, when in fact the minimum fine under the Occupational Health and Safety Act is getting off scot-free. I think that is wrong.

The Chair: The group scheduled for 10:30 is delayed, but Mr Lang, from the Federation of Canadian Unions, has kindly agreed to move his position up from 11 o'clock to now. We appreciate that. Just before you start, is the provincial federation of labour the provincial body underneath the Confederation of Canadian Unions? Do I have that organization straight in my head?

CONFEDERATION OF CANADIAN UNIONS

Mr Lang: I am a national officer of the Confederation of Canadian Unions and I am presenting this brief on behalf of our members in Ontario. We do have an Ontario council.

The Chair: Is that called the provincial federation of labour?

Mr Lang: No, it is just called the CCU Ontario council.

The Chair: Because there is another organization, not affiliated with the Ontario Federation of Labour, I think, called the provincial federation of labour.

Mr Lang: There are some. I mean, there is an organization of what we refer to as company unions that exists in Ontario. I forget their exact title. Then there is also the committee that Ralph Ellis sort of heads in Hamilton which often, you know, tends to present itself as the CCU, which has caused a few difficulties.

The Chair: I was just trying to expand your empire this morning. Anyway, we welcome you. We do welcome you to the committee.

Mr Lang: We do not need that. I believe our brief has been distributed. I am going to read it because it is fairly short.

The Confederation of Canadian Unions is pleased to have this opportunity to appear before you today. Rather than go through a clause-by-clause analysis of this important piece of legislation, we have decided to focus our remarks on what we feel are the most important issues raised by this bill and its impact on occupational health and safety in Ontario.

The CCU, since its founding in 1969, has been playing an active role in bringing about the Canadianization of our labour movement. We have 10,000 members in Ontario who earn their living in construction, mining, clothing and textiles and in a variety of service industries from transportation and communications to hospitality and the quasi-public service. All of our members are directly affected by Bill 208. I should just add that we have about 40,000 members nationally, with our strongest bases in the province of British Columbia.

By this point in the hearings on Bill 208, members of this committee must be quite familiar with the disturbing statistics on the incidence of workplace accidents and deaths in the province. On average, one worker is killed almost every day on the job in Ontario; nearly, 2,000 are injured. Currently, almost 10,000 workers are permanently disabled each year from workplace injuries. If we are to be honest, we have to admit that despite legislative reforms, commissions of inquiry and other government initiatives, these statistics are not improving. Indeed, these statistics understate the case since they ignore almost totally the death and suffering caused by occupational diseases.

I am sure also that you have been reminded many times that behind each of these statistics there is a human face, a personal or family tragedy. I can speak from experience, for my father was killed in an accident at Inco's Creighton mine in 1954. Such events tend to have a profound impact on one's life.

In preparing this brief, however, it has been Steve whom I have not been able to get out of my mind. Steve—an immigrant worker, a father of a young family, a union activist, a fighter—had his hand mangled on the job in a Toronto sweatshop last October. Steve and his fellow workers had organized their plant a few years ago largely because of the horrendous health and safety conditions.

They had worked hard to win some improvements, but anything they had wrestled from management did not count for much when, on a night shift last October, Steve, working alone, fought for half an hour to free his hand from the rollers of a temperamental machine over which the workers and their union had made numerous complaints. Steve was in our office last week debating whether to submit to a fourth skin graft operation on what is left of his hand. I did not have the nerve to ask him how he was feeling.

The daily carnage that occurs in the workplaces of Ontario continues relatively unabated

because employers, the government and society at large are quite content to accept this as more or less a normal condition. Workers are no longer prepared to accept this situation. There will not be any major improvement in the safety of workplaces unless there is a massive shift in the laws governing workplace health and safety and the attitude of the government in enforcing those laws.

Forgive me for citing an example from a neighbouring jurisdiction. Early this month, the Quebec government decided to drop criminal charges against Balmoral Mines arising from a cave-in 10 years ago that killed eight miners. In 1981, a government inquiry concluded the cave-in was foreseeable, the company had used an inappropriate method of mining, it had no qualified engineer on staff and the consulting engineers used by Balmoral were associated too closely with mining promotion.

An initial trial resulted in the company being acquitted of manslaughter, but last March the Supreme Court of Canada upheld an earlier decision to order a new trial. Part of the deal to drop the charges was an offer by the company "made graciously and for humanitarian reasons" to pay \$25,000 to the family of each of the victims. I suggest to you that if in a case that dealt with any other sector of society an attorney general agreed to swap criminal charges for cash, opposition politicians and editorial writers across the country would have a heyday. But because this case involved the workplace, it passed with hardly a mention.

It was, however, noticed in the workplaces of Ontario. A miner in Sudbury with whom I was discussing this case stated that we have now established what the life of a miner is worth in Quebec. He advised me cynically that if I worked really hard on this brief, maybe I could get the price jacked up to \$30,000 in Ontario.

As an elected officer and leader of CCU, I need to put a brake on the despair I feel when confronting the overwhelming problems and inertia associated with workplace safety and health. I need to remind myself that if the political will is present, it is possible to make dramatic changes in society's values through the way laws are enforced.

We have seen in recent years a significant shift in the way laws against drinking and driving are enforced. To a lesser degree, important steps have been taken to recognize and deal with wife beating as a crime. Similarly, I believe it is possible to develop legislation and enforcement mechanisms that would result in changing

society's complacency and indifference towards occupational accidents and disease and create truly healthy and safe workplaces. The problem I have is that I do not think Bill 208 is going to help very much in making such changes.

In our opinion, the central feature of Bill 208 is the creation of a bipartite agency with immediate responsibility for training, health and safety promotion and research. As one of the smaller labour federations in the province, we were not a party to any of the discussions that preceded the drafting of Bill 208. We want to use this opportunity, therefore, to raise some of our general concerns about the philosophical implications of this move.

We fear that this agency elevates the flawed—I wanted to say “phony”—internal responsibility system to a higher level, creating for the government a ready-made excuse for absolving itself of its responsibility for making and enforcing laws that protect workers' health and safety. These fears would increase should this agency, at a later date, be given the regulatory and enforcement powers currently exercised by the Ministry of Labour's Occupational Health and Safety Division. Given that neither the current act nor Bill 208 contains a statement of purpose that commits the government to the goal of preventing all occupational injuries and diseases, this agency will be simply tinkering with the inadequate system that has produced the current deplorable situation.

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We also want to raise a very practical concern about the amount of time and energy required on the part of the labour movement to make such a system work. Remember, we are not just talking about the co-chairperson and the directors but positions on the boards of all the safety associations and all the committees that will be struck to carry out the work. There are going to be a lot of meetings to attend. Who is going to do this work?

I recognize within the labour movement generally there is a core of dedicated and highly skilled representatives working diligently on health and safety issues. Although we have had our differences on other issues, we have over the years in the CCU developed similar positions on health and safety matters with unions in other federations and have co-operated on these issues to a large degree. I am sure that Ontario Federation of Labour unions are faced with the same dilemma as unions in the CCU. Our best representatives are needed defending our mem-

bers on the job. Who is going to be available to run the agency?

I have a related concern about accountability. Throughout the democratic labour movement, there are elaborate checks and balances that ensure that stewards bodies, grievance committees, negotiating teams and executive boards are answerable to the union members for the authority they exercise. Nowhere in Bill 208 is there any mechanism for representatives of labour holding positions of potentially great importance to be accountable to their constituents. We feel this bipartite agency, in its basic design, encourages the co-option of labour's struggle. This tendency will only be accelerated if the legislation ignores the great imbalance that currently exists in the resources available to labour and to management and the absence of any mechanism to ensure that those appointed to the agency are accountable to the members they represent.

Apparently, the Minister of Labour has been persuaded by business interests to enlarge the agency's board of directors to include a full-time, supposedly neutral chairperson and four experts in the occupational health and safety field. If this were allowed to happen it would be a disaster. It would simply stack the cards in an already loaded deck against labour.

Bill 208 brings under the authority of this new agency all the safety associations formed under section 123 of the Workers' Compensation Act, except the Farm Safety Association, and provides that the funding dollars currently received by these associations be handled and distributed by the bipartite agency. Implicit in this move is, in our opinion, a recognition of the long-standing and well-founded criticisms of these safety associations. In our opinion, these safety associations have been more than useless and account for a massive waste of money that could be put to much better use.

In trying to deal with the political hot potato of the safety associations, Bill 208 has actually created a much worse situation. Not only are these associations given a new lease on life within the agency but by proposing bipartite direction of all educational programs, Bill 208 undermines the smaller and more poorly funded educational programs of labour. We would prefer it if the government withdrew its support of these safety associations or, at the very least, simply split the \$46 million between labour and management and gave labour the authority to conduct its own educational programs in the workplace.

Since this is not politically feasible, we insist that labour have the freedom to develop and deliver its own educational programs. This is absolutely essential. If workplace education is under the joint direction of labour and management, the best you can hope for are programs that provide technical information. That is not good enough. We need to be able to teach our members how to organize and fight to make the laws work, to get employers to move and to make real change happen. We are not going to be able to teach these skills and the political analysis that supports them if the educational programs are developed and supervised jointly with management.

The only legislative change in the last 10 years that has significantly altered the balance of forces between labour and management on health and safety issues has been the right to refuse unsafe work. By extending this right to include "work activity," Bill 208 recognizes what many workers have already won on the job as a reasonable interpretation of the present legislation; namely, that workers have a right to refuse to lift heavy loads or to work on equipment that is so poorly designed that it is likely to cause a chronic condition over the long term.

Some sectors of the business community have been lobbying hard to have the right to continue to injure workers in this way, and the Minister of Labour apparently has been listening seriously to their views. He is proposing to introduce qualifications which would restrict the right to refuse to work that imposed an imminent danger. This formulation was supported by management and rejected when the Occupational Health and Safety Act was passed over a decade ago. It would be a tragedy if this committee even contemplated taking such a backward step at this time.

Bill 208 authorizes a certified member of the joint health and safety committee to order that unsafe work be stopped. This authority is a logical extension of the right to refuse and counters the possibility within the current legislation of an employer continuing to have unsafe work performed provided he can find some worker to do it. One problem that we see with Bill 208 as it is currently drafted is that workers are not fully insured against loss of pay for either refusing to perform unsafe work or if they lose work as a result of an order that unsafe work be stopped. The absence of wage protection places enormous pressure on certified worker members and the workers themselves from exercising these rights.

Bill 208 also establishes incredible disciplinary power for the agency to act against the certified worker member who acts improperly, negligently or in bad faith in issuing stop-work directives. Ministry inspectors, policemen, Supreme Court justices even, are not expected to exercise their judgement with axes like this hanging over their heads. Why are these penalties devised only when workers are given some limited authority?

Once again, employers have strongly opposed any extension of the right to refuse or to stop unsafe work. They have apparently convinced the Minister of Labour to support some cock-and-bull distinction between good employers and bad employers. With good employers, decisions on work stoppages will be made jointly, which, it should be pointed out, can be done now without any change in the legislation. For bad employers, the authority to stop work will be given to certified worker members only in situations of immediate danger. Then Ministry of Labour inspectors would be part of decisions on further action.

Does this not make it clear to you that the debate around Bill 208 is not about how to prevent accidents, save lives and eliminate mangled hands? The real issue is management's rights, and management is fighting tooth and nail for its right to continue to injure, maim and kill, because unfortunately, that is considered an acceptable cost of doing business. As long as legislation talks in terms of internal responsibility, common goals, joint committees and workplace partnership, employees are quite happy, but once legislators attempt to give workers and their representatives even a modest increase in their legal rights to protect themselves, they are met with concerted and entrenched resistance.

Bill 208 does contain some modest reforms for workers. It extends protection to workers in smaller establishments; it slightly expands our right to get information; it increases the maximum fine that can be levied. But Bill 208, in establishing a bipartite agency whose authority will likely be extended in future years to cover most occupational health and safety matters, may well be placing the labour movement in a position where it is even less capable of fighting for the changes that are needed. In our opinion, one thing is certain: If workers and their unions are not in a position to force these changes, healthy and safe workplaces in Ontario will be a long time coming.

The Chair: Thank you, Mr Lang. I gather that you do not like the idea of the bipartite agency,

even without the neutral chair, even in its initial proposal by the minister. Is that correct?

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Mr Lang: Yes, that is true. I am in the position of not having to make these decisions that other labour leaders have had to make or have to make, but I feel very certain, if Bill 208 passes as it was originally drafted, that I will be back here in 10 years and we will be looking at probably exactly the same, or essentially the same, situation. Bill 208 is not going to change anything.

It concerns me very greatly what is implied within this bipartite agency, because if I am going to be honest, as I look at the labour movement generally, and I spend a lot of time looking at that, I cannot see how we are going to be able to use that agency to make the changes that are needed. I fear very much that labour is going to get sucked in and then we will be in a position of not being able to complain because, of course, it is going to be a part of the decision-making. This was even initially when Bill 208 was drafted.

I can understand that people are looking at all the money that is wasted by these safety associations, and it is a crime what they have done for years, but nobody is prepared to just stand up and put them out of their existence. So they say: "Well, we'll get our hands on some of this money. We can do a better job." But you know already what has happened is, initially they were talking about they were at least going to be able to appoint half the people as the directors of these safety associations. I still think that is very problematic.

These associations are well-established. They are responsible for the situation in health and safety that we have now. They are entrenched, they are great lobbying things. Are you expecting that even if you got half the board of directors from labour they are going to be able to walk in and change things? I have great doubts that we can do that. They have their agendas set and everything. We would have some effect, but I do not think we would be able to do anything close to what is needed. But once you do that, you are also giving up your right to ever complain about these things. Then what has happened since then? Of course, the ink was not dry on the bill and these associations were out appointing their own labour people to their board of directors and saying that is what they want, and apparently that is what is going to come down the tube.

Can you imagine if the Ontario Federation of Labour has two people on the board of directors of the Industrial Accident Prevention Associa-

tion and it has a couple of company unionists, a few workers who are buying their line? What impact are you going to have there? I cannot see you having any impact. You will have a lot of arguments and your hair will grow grey earlier, but it will not change.

I am not talking just out of sitting in my office dreaming these things up. I sit on the joint steering committee on occupational health and safety that is trying to develop regulations. It is a bipartite committee. There has been a lot of good work done on there, but it is an unreal world. You go sit on these committees and it is all sweetness and light and you talk. In some instances you can make significant progress, you can get some things done. You find that it is the Ministry of Labour that is causing all the problems on some issues. But it is an unreal world because I go back to my regular job and I spend all day in negotiations, arguing with the company to get what is going to amount to another \$50 to get work gloves replaced when they wear out.

There is no connection between the two things, and this is the reality. So you have all this legislation and all of Bill 208 and all of these joint committees pretending that they are making a difference, and out there in the workplace you have to fight every inch of the way, tooth and nail, to make even the smallest changes. That is the problem that I see with all of this and that is why I am, as you can tell, very despairing. None of this, if we are going to be honest, is really going to amount to anything because it does not deal with the question of rights. It does not deal with that. The act does not even have a statement of purpose, that it wants to make things better. No matter what we do, there are all these other much more important messages, like what happened in Quebec, that are really saying what the reality is.

The only good thing that I can see is that over the last 10 years workers understand that much better and they are much less willing to accept this any more. I do not know what is going to happen, but I think you are fully aware that this Bill 208 has sparked a tremendous debate within the labour movement precisely over some of the issues that I am raising. Hopefully it is going to continue. I wish them luck, but I am very concerned about this bipartite agency. I think we are just tying our hands behind our back and we will end up in a worse position—I am speaking as a unionist—that the labour movement will end up in a worse position than we are in now, with more money to spend.

The Chair: Thank you. We are almost out of time and Mr Wildman and Mr Lipsett both are on the list, so if we could have a short question each.

Mr Wildman: I want to congratulate you for putting the issue very starkly and with feeling, because really, what this is is a debate over power in the workplace. That is essentially what it is. You in your brief, on pages 7 and 8, put it very well when you characterize the lobby by the business community, where you say—of course, business would never admit to this, but essentially I agree with you—that it was lobbying hard to have the right to continue injuring workers and to decide whether or not measures should be taken to make it safe, or if that cost too much, not to make it safe. Your comment about the \$30,000 in the settlement in the Balmoral Mines case—we know that in cases of airline accidents, the minimum at least is \$75,000 for a life.

I am wondering, though, if you believe that the extension of the right for worker inspectors or certified worker members of the joint health and safety committee to shut down an unsafe workplace would be a step forward if that right were to remain unilateral rather than, as the business community is attempting to do, make it a joint decision.

Mr Lang: Yes.

Mr Wildman: Keeping in mind what you said about losses of pay.

Mr Lang: Right. It is an important extension, so it will make a difference. As I say, the only thing that has made any difference has been the right to refuse. That is the only thing that has made any difference, and it has been so framed and protected.

I think of the case of Steve. This obviously makes me very angry, but I do not even think the right to stop work would have helped in that situation, considering all the circumstances. I doubt if the union and Steve, who happened to be the health and safety representative, would have been able to stop that machine. I think that you have to realize that. There might be a low-wage, immigrant worker sweatshop situation, and the union is not in a strong position. But even if you are talking about an auto plant where the unions are stronger and what not, I do not see it is going to make that much difference. But it is an important point to be made, and that is really the only good thing, the only extension in the act that amounts to much.

I also think the fines will have some effect if they start levying them at the maximum.

Mr Lipsett: Mr Lang, on page 8 you comment on good employers versus others. Do you see any

need in the bill to recognize good employers in some way?

Mr Lang: Not in the way that this purports to do. I think there is a difference. I think some employers take a different attitude, but I do not think that it helps to try to write this into the framework of the legislation, because of course, who is going to be a bad employer when you put it in the law, however you frame this? But I think where the difference is in the accident statistics and the way the plant works.

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I think the way I would approach it to get at bad employers, people who flagrantly violate the laws, is through the enforcement mechanism. When those violations are criminal, they have to be prosecuted to the fullest in the criminal courts, and there is a lot of that. There is a lot of criminal negligence that employers are engaged in and virtually they are never held accountable for.

There are a lot of regulatory things that employers violate. In that instance, there should be administrative penalties that are built right into the act, where the inspector comes in, "That's not being done right," bingo; like a traffic ticket, the same sort of thing. That is not hard, but in the bill—I am dreaming here—nowhere in Bill 208 or in the Occupational Health and Safety Act is anybody even talking about that sort of approach. If you are serious about making workplaces healthier and safe, do that and we will start seeing a big difference in the statistics.

The Chair: Mr Lang, thank you very much for a very compelling presentation. We do appreciate it.

The Chair: The next presentation is from the Oshawa-Durham Home Builders' Association. I gather that the gentlemen who are here are not themselves with the Oshawa-Durham Home Builders' Association but rather with the Toronto Home Builders' Association and that you have had a delightful trip in here this morning.

Mr Silverberg: Extremely delightful, yes.

The Chair: We appreciate the effort you have made to get here.

Mr Silverberg: We did our best to prepare what we could on the way down.

The Chair: We do have a copy of the brief and we appreciate your presence here and look forward to your presentation. The rules are that each group has 30 minutes and that can be taken up by your presentation or by saving some time for an exchange with members of the committee.

So if you would introduce yourselves, the next 30 minutes are yours.

OSHAWA-DURHAM HOME BUILDERS'
ASSOCIATION
TORONTO HOME BUILDERS'
ASSOCIATION

Mr Silverberg: My name is Harry Silverberg and this is Stephen Dupuis. We would like to start by thanking you for the opportunity to make this presentation today.

The Chair: I should say before you start that some of our members are also not here yet, so that is why you see a sparse gathering.

Mr Silverberg: Yes, I guess you understand. Oshawa-Durham could not make it and notified us a short time ago and we are going to give it a shot at trying to get their points across as well as ours.

The THBA is, in our opinion, the voice of the residential industry. The construction industry itself is an \$18-billion industry employing over 500,000 people right now. We are larger than manufacturing and, all told, we are the largest industry in the province.

We share your concern for a safe working environment, and I guess we want to make that point clear. To date, as you know, the construction industry in Ontario has the best safety record in the world, according to the Ministry of Labour, and there are statistics to prove it. There was a 40 per cent reduction in accident frequency in the last number of years, as well as a 58 per cent reduction in medical aid frequency and a 64.5 per cent reduction in fatalities.

The construction industry has very unique characteristics. There is not a static workforce as there is in other industries. Our view is that Bill 208 will not increase workplace health and safety. The main point, in our opinion, the question we have, is, will it save lives? In our opinion it will not save lives any better than we are doing currently.

I would like to go over some of our specific points, our recommendations. The item which is of greatest concern to us is the power of the certified member to stop work. There is no evidence that this new power will result in an increased recognition of dangerous conditions. Currently, if you go by the number of injuries that take place across the country percentage-wise, 27 per cent are due to lifting, pulling, carrying and throwing and 19 per cent are struck by falling objects. These injuries are not a result of immediate, detectable dangers which would be recognized and rectified by a stop-work order.

In our opinion, the existing powers of the Ministry of Labour inspectors, combined with the employees' right to refuse work, is a balanced and effective system, and that is the one that is currently in place. The potential for abuse of the power is great in our opinion. We would like it withdrawn, or we give the following recommendations.

Obviously our first one, as I said, is to have it deleted completely. The next one is that this section be replaced by the right of a certified member to direct an immediate conference with the employer, or alternatively that the section be replaced by the requirement that the certified employer member and certified worker member consult, and where they jointly agree that work at the workplace or part of the workplace must be stopped, they jointly direct the work to be stopped.

The Workplace Health and Safety Agency is the next item I would like to talk about. Currently there is, in our opinion, an overrepresentation of organized labour on that committee. To date, only 30 per cent of the workforce in this province is organized, yet 50 per cent of the agency is union or employer. We support the proposal that was made by the Council of Ontario Construction Associations and some other employer agencies which basically states that the seven directors should represent management, three represent organized labour and four represent nonorganized labour. The proportion of organized and nonorganized worker representatives on the agency would be adjusted from time to time to reflect the proportion of the Ontario workforce that is organized and nonorganized. That is how we feel on that one.

We also want to make sure that this agency does not undermine existing organizations like the Construction Safety Association of Ontario which does an excellent job and stays more as an umbrella-type agency.

The next item I would like to talk about is certified members. While we reject the power of the certified member to stop work and while we do not foresee a strong centralized agency, we endorse the greater emphasis on training and education. We like the fact that there is going to be additional training, but we do not want to see it being done in a general way. We want to know that we can get specifics as to our industry so that the different little items are not missed.

Also, with the certified members currently there is a little bit of ambiguity in the bill. I guess you have to understand our industry to understand why there is a little bit of ambiguity. We do

not have a set plant or area where there are 30 or 40 or 50 people working. There is the construction site with a builder. The builder has 30 or 40 different companies on that site at one particular time. So when you are trying to pick a duration of a site, and a number of people who will be responsible, to have a certified member is near impossible with the turnover and the overflow and not knowing what trade will be on that site at that time.

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What we have recommended is that there be up to 50—I may as well read it. I am sorry, gentlemen, you will have to bear with me. I am getting these notes in advance. In the construction industry, an employer-constructor shall not be required to appoint a certified member where any one member at a project employs less than 50 workers or the aggregate of workers performing work at the project is less than 200 and the project is estimated in the notice of project to be a duration of less than six months.

That will allow for the overflow and the change of people. Otherwise, it will be near impossible to get the regularity of a certified worker from a trade. We just could not understand, if you have a site and there are 100 workers on it who represent 40 different companies, who would be responsible under the current act for having the certified member to report to the employer certified member. One of the trades? All of the trades? That means at any one time you could have 30 certified members on that site reporting back to the builder, which would be a joke. It would be very unorganized.

On the right to refuse work, we support the amendments indicating that workers may refuse to work at a work activity which presents immediate or current dangers to a worker. We believe the term “work activity” should be further defined so that we can understand what that involves.

Search and seizure: The existing provision gives inspectors now very broad powers and the proposals under Bill 208 create a warrantless search and seizure. We believe this new power contravenes section 8 of the charter and should be removed from the bill.

Something which I mentioned earlier is the employer duties and penalties. Training should not be driven by the agency but by the industry. The other point which gets to us in a lot of circumstances is the fact that the worker is not obligated to take the training. We may set it up—whether it is the workplace hazardous materials information system or whatever—and

we have to train our workers to take this program, yet at the same time they are not required to, nor do they have any penalty if they do not. We agree with proper training programs and we would just like to see it enforced from the other side so that they are required to sit down and be trained as well.

The fines which are imposed in Bill 208 are the highest penalties in Canada, and we agree with a recent judgement that was made by a judge at the district court of Brockville, Ontario, which stated that the goal of protecting workers cannot be met by simply raising funds under Bill 208. Rather the court suggested that alternative solutions must be sought in order to ensure that companies take positive steps to protect workers through training and other safety programs.

We therefore recommend that in addition to provisions to fine companies or impose jail terms, provisions which permit suspended sentences or charges on conditions which require companies to report back on the health and safety initiatives and programs to the court be implemented in the legislation.

Basically, doing it as quickly and as concisely as we could, those are our major points. In conclusion, we would just like to say we believe the system that is currently working is doing extremely well. We do have an excellent record of accident prevention in this province and we hate to see a lot of energy put into areas that will just confuse the issues rather than improve them. I would like to see more steps taken to improve what we have rather than make grand changes. That is how we feel right now.

The Acting Chair (Mr Wildman): Thank you, Mr Silverberg and Mr Dupuis. A number of members have indicated that they wish to have an exchange with you. Mr Dietsch is first.

Mr Dietsch: I thought I heard you say in the very early stages that you felt that a certified worker would increase accidents? Did you say that?

Mr Silverberg: No, I do not think I said that.

Mr Dietsch: Okay. I was reading and I was listening to you as well. I thought I heard that point raised.

Mr Dupuis: I think what we were saying was that we are not convinced that this bill will increase workplace health and safety.

Mr Dietsch: What I would like to ask you is in relationship to certified workers having the right to stop work. You indicate that you feel there would be some abuses of this kind of a system. Do you have any facts that substantiate that there

have been some abuses under the current system? Right now, as you are aware, individuals have the right to refuse unsafe work. In your experience in the building trades, has there been any—

Mr Silverberg: No. The right to refuse a work activity we agreed with. We stated that. If they see a dangerous or life-threatening injury, we agreed that they should be able to stop work. But to shut down an entire site, which is what you are referring to, as a result of that, I do not think will have any benefit. We do not want to see anybody get hurt—that is our concern—but we do not want to see it shut.

Mr Dietsch: My understanding is that the whole site will not necessarily be shut down. One particular job or the issue that creates the unsafe situation could be shut down if it is felt to be endangering to health. But not necessarily do you walk in and shut down a whole particular site for a segment of the site that is deemed to be unsafe.

Mr Silverberg: That is not the way we understood it to be. As it says, in a work situation, if somebody feels it is unsafe, you can shut down a particular site.

Mr Dietsch: So it is the definition of “site” you are concerned with. You have nothing against an individual who shuts down a particular section in relationship to the section that is relating to the unsafe condition. You are concerned about the overall site.

Mr Silverberg: Yes, plus we are concerned with the worker doing it in a workmanlike manner. As we said, if something like this was to go through, in effect the worker does have that avenue through the Ministry of Labour. He can make the phone call to come in. They can shut it down or rectify the problem that is there. That venue is there now. But to shut down an entire area just on a worker’s say-so without any type of backup, at the least that he go to the employer and say, “Look, something is wrong here,” etc. “We have to rectify it or somebody is going to get hurt.”

Mr Dietsch: What kind of a health and safety process do you have on your sites right now?

Mr Silverberg: In a general term?

Mr Dietsch: Yes.

Mr Dupuis: I can speak for the industry at large, and then maybe Harry can speak about his own industry from a THBA point of view. I guess many local home builders’ associations have health and safety committees. I know the Toronto Home Builders’ Association has an active one.

Some of the things that we have done—just yesterday, for example, we ran a first aid training program which is well subscribed by our members. We have a series of health and safety seminars coming up. It is a certificate program which was organized and delivered by the association. We deliver WHMIS training right in our own facility to our members. In addition to what we are doing, there is also the Construction Safety Association of Ontario that has a well-established record. So that is what we are doing on a broad level. In terms of onsite, Harry, maybe you could speak to that.

Mr Silverberg: Specifically, everybody is doing the best he can to improve and impress upon his workers. We have in-house meetings. I can get rather specific, but it has become very safety-conscious in the industry, especially from the builder’s standpoint all the way down in the last number of years, which has been reflected in the statistics, right down to picking up materials on the site to stop injuries. It is specific to the different companies, yes, as to the level.

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Mr Dietsch: I guess part of the concern that we are faced with as members trying to draft up legislation, in terms of improving the health and safety at particular sites is, albeit there has been some improvement in the construction industry overall, there has been an increase in the numbers of injuries over the last five years. In 1983-84, there were approximately 12,200, up to as many as 16,000 this year.

I recognize that there are also additional bodies that are working in the workplace, but there is a constant increase in the amounts of injuries as a whole. I think the challenge that this committee faces is to improve the health and safety legislation to the degree where the accidents are going to be lessened as much as humanly possible.

We have had it expressed on a number of occasions from employers, the concern with the abuse, if you will, of stop-work areas, but on the other side have had it pointed out to us by labour on a number of occasions where individuals have been hurt. I think the difficulty is trying to find that median ground, if you will.

I was interested in a point that you raised with respect to joint conference and joint consultation. I guess I would ask you in relationship to that if you feel that is a solution that could very well work. I am pointing towards your particular workplace as well. We have had presentations from the Council of Ontario Construction Associations and from organizations as a whole, and I

guess you know best the kind of relationship you have with your employees. If that happens to be a joint consultation for things of serious nature and immediate danger, will that work?

Mr Silverberg: We feel so. Do you want to make a comment?

Mr Dupuis: If I could add to that, one of the things that we had suggested in addition to this sort of immediate conference was that there was no negative force in terms of abuse of that power, there were no fines or penalties for misuse or abuse of the power. Maybe we can suggest that that could be one of the controlling variables if you are going to go to this different system. We prefer to see it all removed, but if it is going to stay in, there should be some balance of power in the system.

Mr Silverberg: Geared to the employer as well as the employee, where they have to come and talk to their employer at that time; if the employer does not respond, I think there should be penalties imposed at that point, as well as on the employee.

The Chair: We do not have much time left. Mr Wildman and Mr Tatham both had a short question.

Mr Wildman: Actually, there were a couple of things I would like to ask about. Can you confirm, in terms of fatalities in the construction industry in Ontario, that last year it dropped from 39 to 35, a total of four, and that so far this year, since 1 January, there have been five fatalities in construction in this province?

Mr Silverberg: Can I confirm that, did you say? I cannot confirm that.

Mr Wildman: Those are the figures that we had and that have been presented on a number of occasions before the committee. My concern is on page 6, when you talk about the exemptions; 50 employees or six months' duration. Can you confirm that that would exempt between 80 and 90 per cent of all construction sites in this province?

Mr Dupuis: No. I could not confirm that, but I do not think it rules out the large project, high-rise residential, industrial and commercial projects.

Mr Wildman: Exactly, but we are talking about home building right now, are we not?

Mr Dupuis: Yes. The point that was made, of course, is that there are 30 and 40 subtrades on a site and they are constantly shifting in and out and we are just concerned about a situation of chaos with that many certified members on site.

Mr Wildman: I would have asked for the representation, but we do not have time. I will close by saying that the suggestion from business, when Bill 70 came in, was that it was going to produce chaos in the workplace, and it has not happened.

Mr Tatham: Following up on certified members on the site, is there no way to have somebody responsible? If there is a problem, there is a problem, and whether there are one, two, three or 20 certified people, somebody has to get up and say, "Hey, we have a problem here, folks." Does that not make sense?

Mr Silverberg: Yes.

Mr Tatham: There has to be somebody responsible and it has to be worked out, regardless of how many qualified people you have on site.

Mr Silverberg: Okay, I understand what you are saying. The problem was that when we were trying to address it, the way the bill was standing at the time, there was no way we could come up with a positive way of administrating it with 30 different companies on the site.

Mr Tatham: You say that workers can decline training and education programs. Would you continue to employ a person who will not take training? I have followed the quarries for 35 years and I know they are very strong on training their people in what to do. Could the construction people not do the same thing?

Mr Silverberg: We try our best, yes. I guess it is more that, along with the authority, we want to put some responsibility. I think it is only fair for both sides that if we want to have a safer workplace, it is mandatory that workers are responsible for being trained. We feel it is necessary on the other side as well. Yes, we can set up the penalties, but that is not always perfect.

Mr Tatham: If you have a new machine on a job, you would not say, "Go use it." You would have to get some training on safety precautions and how to use it before you got a person to use it, would you not?

Mr Silverberg: Yes, correct.

The Chair: Gentlemen, thank you for your presentation to the committee.

The next presentation is from the Grocery Products Manufacturers of Canada. Like everyone else, I assume you had to struggle to get here this morning, but we appreciate the fact that you made it.

GROCERY PRODUCTS MANUFACTURERS OF CANADA

Mr McGregor: Not all of us made it.

Ms Rowan: You probably notice that my name is not Dean Mackey or Wayne Heard from Quaker Oats. My name is Kathryn Rowan from the Grocery Products Manufacturers of Canada. Dean Mackey and Wayne Heard are somewhere in a car feeling a little beleaguered in the outskirts of Toronto. They could not make it in, so we have a couple of new faces: Peter Barkla, who is with Campbell Soup, the vice-president of human resources, and Dave McGregor, who is with Wrigley. He is the director of personnel.

We had hoped to have a little more polished presentation. We may just have to walk you through our steps.

A few comments, first, about GPMC. GPMC represents about 140 companies in the business of manufacturing food, beverages and consumer products, so our members span the spectrum from Procter and Gamble products to, obviously, the Campbell soups to the beverages side of the business. Just to give you a sense of the size in terms of the food processing industry itself, not to mention the consumer products, it represents about 84,000 jobs in Ontario.

Just to kick off before I turn the floor over to Peter, I think essentially our position is that we are comfortable with the direction that the minister took back in October with the proposed amendments and that we would support him in those amendments, but we have some further concerns and further solutions to offer him and the committee as they prepare their recommendations. With that, I will turn to Peter for the specifics.

1140

Mr Barkla: Thank you. I apologize for not being perhaps as up to date with it as Wayne Heard would have been, but I will nevertheless try to do the best I can. We are pleased that the Minister of Labour has recognized the potential for workplace disruption with the stop-work provisions of Bill 208 and has offered an alternative to the standing committee on resources development. Our position addresses both the legislation embodied in Bill 208 and the minister's alternatives.

Ironically, the stop-work provisions of Bill 208 erode the partnership concept which the minister is attempting to enhance with this legislation. Providing for unilateral workers' rights to stop work excludes a primary stakeholder from the decision-making process. The strength of the existing Occupational Health and Safety Act in Ontario has been those provisions which embrace the need for joint decisions, joint committees and joint accountabilities.

Bill 208 requires certified worker representatives to take sole responsibility and accountability for decisions in the workplace that may have million-dollar implications for the businesses affected. GPMC believes that this places workers and businesses in an unfair position and may lead to situations where decisions are made to stop work without relevant information being solicited or considered.

The minister's alternative, which draws the distinction between acceptable and unacceptable safety performers, recognizes that many firms exceed established standards and have exemplary records. We believe that developing performance criteria which defines acceptable and unacceptable performance would be a difficult task. The process of actually monitoring workplaces versus this criteria would be an enormous responsibility for Ministry of Labour inspectors on top of their current workload. In 1988, 313 safety inspectors were responsible for 179,000 Ontario workplaces. GPMC believes current inspection standards cannot be met if the Ministry of Labour is to manage these additional responsibilities. In worse scenarios, where it was deemed necessary to station Ministry of Labour inspectors on individual employer premises, the alternative becomes even less viable.

GPMC believes that the stop-work legislation must require the joint agreement of the certified worker representative and the certified employer representative. In the event that agreement cannot be reached, then the Ministry of Labour inspectors would be called in to settle the dispute. It would be incumbent upon the Ministry of Labour inspectors that they respond within 24 hours, as is currently the standard with employee work refusals. It should be noted that requesting a ruling from the ministry would be considered a last resort, since the workplace joint health and safety committees would in all likelihood play a major role in the decision to stop work.

GPMC is confident that this recommendation protects the health and safety of workers. In those circumstances where there is concern regarding potential hazards, employees have the right to refuse work and will act upon this right based on the recommendation of the certified worker representative and their own judgement. Therefore, adequate provisions are in place to protect against potentially hazardous practices or processes in the workplace, and the perceived need to allow for unilateral stop work authority is not appropriate.

None the less, to allay concerns that the requirement of agreement of both the worker

certified representative and the employer certified representative to shut down a potentially unsafe process or operation may result in isolated cases of consent being unreasonably withheld, GPMC suggests a further recommendation. Ministry of Labour inspectors called to settle disputes should be empowered to recommend decertification of a certified safety representative of either party where it is clear that the authority to withhold consent was abused.

GPMC believes that representation on the board of directors of the proposed health and safety agency should attempt to reflect the composition of Ontario's workforce. We note that one significant stakeholder has been excluded by the provision of Bill 208. The act refers only to representation by employers and organized labour, while excluding worker representation from nonorganized environments. This latter group represents 63 per cent of Ontario's workforce.

GPMC believes that efforts should be made to attract directors from this large worker resource pool. To this end, we recommend a bipartite search and selection committee to be established to recruit health and safety agency board members. The mandate of this committee would be to ensure that every effort is made to attract a representative sample of Ontario's workforce to serve on the board. The selection committee could be called upon, on an as-needed basis, with selection of new members to the board requiring a unanimous decision.

We further recommend that the minister consider appointments to the board of directors to be for a term not exceeding five years, with opportunity for one renewal. GPMC offers the government its support and expertise in this area.

In the area of certification, we ask that the standing committee be aware of the complexity and cost of certifying employer and worker representatives and take this into consideration when advising the minister.

Consider the issue of workplace coverage by certified members. Will the legislation require each work shift to be covered, and will this coverage be extended to include those situations where a small group of employees works on an overtime shift? What are the implications for workplace coverage where a certified member resigns, transfers, is promoted or is perhaps even decertified? We believe these are only a few of the scenarios that could unfold in the workplace and that the legislation must take into consideration.

Another issue of complexity is the type of training required for certification. For example, will the training be industry-specific, will it be technology-specific, will it be business-specific, and so on?

If the final legislation does provide for stop-work provisions, these issues will become, along with the cost of training, quite significant.

GPMC supports the alternative position suggested by the minister with regard to the right to refuse work, which narrows the definition of unsafe work to include work of immediate danger, not repetitive motion types of work.

With regard to officer-director liability, worker liability for unsafe acts or negligence has not been specified. In addressing only employer liability, the essence of the bill, which is one of shared responsibility, is not maintained. GPMC would support a balanced approach to employer and employee liability, given that there has been a 20-fold increase in employer liability.

Finally, in concluding, I would just like to say that we at GPMC support the goal of providing a safe work environment; we are committed to it. We believe that the principle of shared responsibility for decision-making is an important one. Thank you for your indulgence.

Mr Mackenzie: I take it that when you refer to the fact that you are pleased that the Minister of Labour has recognized the potential for workplace disruption with the stop-work provisions you are referring to the new minister and not the previous minister?

Mr Barkla: That is correct.

Mr Mackenzie: Because obviously the previous minister was in direct opposition to that particular position.

Mr Barkla: Yes.

Mr Mackenzie: He also indicated, when questioned about the enforcement and the safety inspectors, that we either hired every fourth person in the province as a safety inspector or we achieved an ability to work together as being essential in terms of safety and health. I am just wondering why you feel this way, given that at least some people are now starting to come around a bit. I am not sure if you are aware of the suggestions yesterday from Ontario Hydro, which is one of the largest employers in the province.

Mr Barkla: No, I am not.

1150

Mr Mackenzie: There are, I think, two or three things that might be worth just two or three sentences. "All kinds of assumptions were made

by the doomsayers that, 'All work would stop and the province's production would suffer.'" This is talking about Bill 70 in 1978-79. "That simply hasn't happened. We have had some refusals at Ontario Hydro for activities that were unsafe and in most of these situations, the employees were right. Major work stoppages, however, never materialized."

They go on to indicate that they intend to take a look at strengthening the internal responsibility, including the right of employees to refuse, that they are currently in the process of negotiating that very fact. They mentioned that the entire world was changing and that one only needs to look at the changes taking place to see that people expect to have a greater say in what directly affects them. They go on to make a number of recommendations that are only in principle at the moment, but already are being negotiated with Local 1000, their local union.

Then they say finally: "However, the most important principle is the agreement of shared responsibility and accountability by the union and management for the actions taken by their respective certified members. This demonstration and commitment of trust by both parties will become the cornerstone of our joint partnership in the stop-work area."

I am just wondering if that would not be a little more positive approach than what we are seeing from most management groups, given the fact that you are certainly not on side with any of the workers' organizations when it comes to health and safety.

Mr Barkla: Mr Mackenzie, what we are advocating is the point of shared responsibility. What we are saying is that where a stop-work order is coming down, it be a shared responsibility between both the worker-certified representative and the management-certified representative.

Mr Mackenzie: But management already has the right to unilaterally shut down a workplace at any time, whether it is over safety or any other matter. It is a right that the workers do not have.

Mr Barkla: Yes.

Mr Mackenzie: Except in some specific cases, where incidentally it is not being misused.

Mr Barkla: Yes, but of course we are not arguing about those other points right now. We are arguing about the safety now.

Mr Mackenzie: When it comes to the safety of a worker the facts are, though, that it has been clearly demonstrated that the 285 deaths last year in Ontario and the 500,000 injuries were

workers, not the owners and managers, and that is almost in totality.

Mr Barkla: I think I agree with what you are saying, but I do not think that the fact the employee would have said to stop work would have changed the circumstances surrounding, perhaps, the injury or death. As you know, most accidents happen at a particular point in time and the fact that they happen are accidents. That is why they are called accidents. I think that generally what we are saying is that where there is an unsafe condition that could be hazardous, it is something that could be discussed. Certainly in the food industry, which is a batch-type industry, you are talking about costly processes there. You can stop them, slow them down, but to stop them completely entails cost.

I think it should be something that should be discussed between the worker and the certified management representative. You understand of course that even where you do have management shutting down a process, a supervisor alone cannot make that decision. He has to discuss that with somebody else. That is the sort of thing we are talking about here, a dual, shared responsibility.

Mr Mackenzie: As my colleague said earlier, if we knew the rock was ready to fall in one of the mines, we sure as hell would not want to wait until we had discussed it with the supervisor. In fact, the safety record has substantially improved where they have the right to refuse. I am talking about Rio Algom and some of the mines now where that has been written into the contract. Even management admitted that there has been a substantial reduction in the accident rates and the injuries and deaths since that was put into their contract provisions.

Mr McGregor: You made the point with regard to the way it currently is set up and the fact that an employee can take it upon himself to, in fact, refuse to work and there have not been abuses of that particular system.

Mr Mackenzie: Except that is very ineffective, as you know. The internal responsibility system, even in the ministry's own studies, is simply not working at present.

Mr McGregor: If there have not been abuses, I am not sure that there is a need to change that. Why introduce this particular certification of workers?

Mr Mackenzie: You say there have not been abuses. I am looking for the information. Once again, apart from the figures you have heard as well as everyone else, something like 78 per cent

of the workplaces in Ontario are noncompliant with health and safety provisions. This is the internal responsibility study done by the ministry, and 78 per cent of our workplaces are in violation of the act or the regulations.

Mr McGregor: With regard to setting up health and safety committees?

Mr Mackenzie: Health and safety matters, orders that have been issued and not complied with, the entire field, which is a rather damning statistic, and that is not ours; that is the ministry's.

Ms Rowan: But then they should be penalized under the current act.

Mr Mackenzie: We have a \$25,000 maximum fine, seldom imposed, and when it is the average has been \$2,300 in Ontario. We have had walkouts, major ones where we have had them. We have had some good examples of it in the testimony yesterday: McDonnell Douglas, just as one example—now that is a big outfit—where we had 600 and some orders not complied with, and no wonder with the situation they had in that plant that eventually you had a work refusal. There it was a major one, 3,000 workers, because, simply, they had been going literally for years with hundreds of orders from the ministry not complied with.

Mr Barkla: But I think the point Catherine made is a valid one, that the ministry has the means of handling that right now under the current legislation.

Mr Mackenzie: It would cost an awful lot to hire the number of inspectors we would have to hire to do it. The previous minister was right, at least in that.

Mr Epp: I want to address my comments to your page 2, the health and safety agency. In the second to last sentence you indicate that representation should not come only from employers and organized labour, but also from the 63 per cent of the unorganized workers of the province. I am just wondering how you can pick somebody to represent people out there if they have not been picked by the representatives themselves.

Let me give you an analogy. At municipal elections you could say 40 per cent of the people get out to vote and you elect a council; 60 per cent of the people do not vote. How can you pick somebody from the 60 per cent who do not vote and say all of a sudden, "Now you represent that 60 per cent," if they have not been selected by the 60 per cent?

Mr Barkla: We believe that there are means of handling that, that we could develop means of

handling that. It is very important in my mind. Campbell, for example, is basically nonunion in Ontario and we feel that certainly from our point of view we would like to have our workers represented on any such board that was put together, as they are affected by what happens. They need to have some sort of voice to represent them.

Mr Epp: I am just not sure how you are going to get those 63 per cent people really to—somebody to really represent them; that is what I do not understand. How have they been chosen by those unorganized people, unless you are going to organize those unorganized people?

Mr Barkla: I do not think you need to organize them. There are ways of doing that without a lot of trouble. You can perhaps—I have not really given it a lot of thought, but I am sure you could develop ways of calling these people together. I know that if you were to contact employers, certainly through some organization like the Grocery Products Manufacturers of Canada, like the Canadian Manufacturers' Association, to put forward names of employees who would be able to serve on such a board, they would be able to do so.

Mr Epp: I would think the employers themselves who are going to be sitting on this committee are going to be somewhat chosen by the employers. They will not self-appoint themselves.

Mr Barkla: The employer representatives?

Mr Epp: The employer representatives.

Mr Barkla: Yes, that is true.

Mr Epp: They will be from some other overall umbrella organization and therefore serve on this committee or will have been selected by a larger group.

The Chair: There are two people who want supplementaries. Do you want to get into the supplementary business? All right, Mr Dietsch and then Mr Wildman.

Mr McGregor: Can I just comment further on Peter's point? In terms of what we have suggested here, and it is a big issue obviously, I do not think it is going to get to a vote situation and we do not want to suggest that you organize the unorganized right now to do that.

Mr Mackenzie: I am pretty sure of that.

Mr Epp: I am not opposed to their being represented. I am just saying, how do you do it without organizing them?

Mr McGregor: I think it would be done, as we have suggested, by a board established to

review, as they do in government, if someone applies for a job if you call for volunteers or people who would be interested. Presumably people would come forward. I am not sure what sort of time would be required in serving on this board, but people would come forward from the Wrigleys or from the Campbells or wherever else is unorganized, individuals within that.

I think you would have to be careful that it would not be influenced by the employer, because they have to be truly seen to be an employee representative and therefore someone in our organization—as we have right now within our company, an employee very involved in health and safety matters, a very active participant in our health and safety committee—would come forward and say, “I’d like to be part of that organization or agency,” and pursue it that way. Hopefully then they would be such that the labour and employer board that would have been appointed to select these people would choose from a host of candidates who would be the appropriate individuals to have.

1200

The Chair: Mr Epp, would you allow a supplementary for Mr Dietsch and Mr Wildman?

Mr Epp: Yes, I would.

Mr Dietsch: Mr Epp has pointed out a valid point. I just want to add a couple of more figures to it to show you how overwhelming it is. We are talking about picking seven people in total from labour from 170,000 workplaces. Presuming your figures are right and 63 per cent is unorganized, or in that ballpark, you are talking about picking three or four people from 100,000 workplaces. The scenario of picking a select committee, if you will, to select these individuals is one thing, but the insurmountable task of selecting someone and then structuring who it is that these individuals are going to be accountable to or responsible to compounds considerably the difficulty.

We are talking on an overall of doing this seven from business and seven from labour. I appreciate your suggestion. I just want to put some more figures into the pie to show you how really difficult that kind of task is.

Mr Barkla: I take the point you are making, but there are organizations out there now that represent unorganized people. For example, the women’s coalition or whatever it is called—I am not quite sure—is certainly representing unorganized women in the pay equity area. So there is an organization that would be able to help call together some women, and there are other

organizations similar to that out there representing groups of people.

Mr Dietsch: There are many organizations out there, and who is the selection made from? Is it made from the grocery people? Is it made from the chemical people? Is it made from all the other host of jobs?

Mr Barkla: But it is no more difficult, I put to you, than perhaps selecting seven union representatives from a whole host of different union organizations.

Mr Dietsch: But they are structured in a different method.

The Chair: Mr Wildman has a supplementary.

Mr Wildman: I have just a supplementary on that. I do not think it is going to be that difficult for the unions because the unions have umbrella organizations that will put forward the names after consultation among the affiliates, just as I am sure the employers will do because they have umbrella organizations such as yours.

Are you members of the Industrial Accident Prevention Association?

Mr Barkla: Yes.

Mr Wildman: Since you are so concerned about representation for unorganized workers in health and safety issues, could you tell me how many unorganized workers you voluntarily put on the board of the IAPA?

Mr Barkla: I cannot answer that. I do not know.

Mr Wildman: The answer is zero.

The Chair: Mr Epp, were you finished?

Mr Epp: Yes.

The Chair: The next questioner is Mr Wildman.

Mr Wildman: The other question I have is just basically that what you are saying is you support the amendments that the minister announced in October, but that you do not believe they go far enough in gutting the bill.

Mr Barkla: What is the point you are making?

Mr Wildman: Is that what your position is, that you support the amendments but they do not go far enough?

Mr Barkla: With the suggestions we made here, we believe that the suggestions put forward by the minister are adequate, with some modification.

Mr Wildman: But you also are suggesting other changes that you would like.

Mr Barkla: That is what we are saying. We are saying with the suggestions we put forward here.

Mr Wildman: So in other words you want further amendments beyond what he has proposed from the original bill.

Mr Barkla: That is correct.

Mr Lipsett: On the top of page 2, you express a concern in the ability of this bill to establish criteria to identify workplaces in your industry that demonstrate an honest responsibility to protect the health and safety of workers. I wondered if you had some examples of the types of difficulties that you might foresee to be able to establish acceptable performance. The exact line is, "We believe that developing performance criteria which defines acceptable and unacceptable performance would be a difficult task."

Mr McGregor: A concern would be in terms of, if one employer has one accident and one person is killed as a result of that, is that considered unacceptable performance? The only measurements now seem to be—at least that reflect back on us—on your accident cost statement from workers' compensation. How much have you cost? How much has the Workers' Compensation Board had to spend on injured workers and accident cases, both lost

time and medical aid, in your environment? Maybe that is not the only criterion.

We are not offering any specific area, but if that is the only designation they come up with, that might not be a true reflection of a poor employer or an employer with poor performance in the safety area. I am not sure what they can be, but there is a concern that when you start using those terms in terms of poor performance or acceptable and unacceptable performance, it requires a broader definition on their part.

Ms Rowan: I think it would be difficult to capture through, say, a five-point criteria step, the differences in workplaces and just how diverse workplaces can be. I think no one company or industry can fit within a box that would be suitable to another industry, for example, and that is the difficulty. I think the difficulty as well is in trying to capture those nuances to be fair to everybody and then logging it into some sort of system and making sure that is up to date on a regular basis.

The Chair: Thank you very much for your presentation to the committee. That completes the hearings for this morning. We will commence again at 2 pm when we will hear from the Labour Council of Metropolitan Toronto. We are adjourned.

The committee adjourned, at 1208.

AFTERNOON SITTING

The committee resumed at 1413.

The Chair: The resources development committee will come to order. We have a full afternoon of hearings on Bill 208, so we should commence.

The first appearance is from the Labour Council of Metropolitan Toronto and York Region. Gentlemen, we welcome you to the committee and we look forward to your presentation. The rule is 30 minutes for each presentation. You can take up as much of that 30 minutes as you like with your presentation, or you can leave some time for an exchange with members of the committee. So if you will introduce yourselves, we can proceed.

LABOUR COUNCIL OF METROPOLITAN
TORONTO AND YORK REGION
CANADIAN AUTO WORKERS

Mr Howes: My name is Bill Howes. I am an executive assistant with the Labour Council of Metropolitan Toronto and York Region. I will be appearing on behalf of the council today, and beg you to excuse the absence of our president, Linda Torney, who had planned to be here but is ill today.

We have agreed to share the time allotted for us with a representative of the Canadian Auto Workers union who is here on my right. They are represented by Brother Moe Kuzyk, who is the national health and safety co-ordinator for the General Motors bargaining units. With your permission, I would like Mr Kuzyk to go first.

Mr Kuzyk: Good afternoon. It is nice to see some of the familiar faces again. I do not know how I always end up sitting on the right, but I will not go into that experience again.

Mr Dietsch: It is going to grow on you, Moe.

Mr Kuzyk: For some of you who have had the opportunity to read a brief that I presented in St Catharines for Local 199, you are probably familiar by now with the fact that I do not come before this committee with assumptions or scenarios that are not in fact. I have supported all of my presentation with information from Ministry of Labour briefs, orders, decisions, etc. Yesterday's 20-page submission that Mr Mackenzie submitted also was supported by the same.

Today, I have also a submission—I am sorry. I held up the wrong one. I really did not want to refer to any specific company. I have a submission

here that I have brought with me and I believe is circulated. I would like to address two specific circumstances for this committee.

First of all, the companies that have been appearing before this committee have referred to frivolous work refusals. There has also been some indication, I believe in a presentation made yesterday, of the fact that if workers exercise their right or their correct procedure under subsection 17(d) of the Occupational Health and Safety Act, which has the worker explaining a hazard or pointing out a hazard to a supervisor prior to exercising his right under section 23, which is the right to refuse—companies feel that if the workers exercised this right, then there would not be any need for right to refuse and thereby there would not be any problems in work stoppages, etc.

I would like to explain the situation that took place on 24 January in St Catharines in an auto facility, where a welder and a millwright were working on a back shift cutting down a duct which was encased in a material which they were not familiar with. Through the process of cutting and grinding, they noticed that the floor in the area was becoming covered with a white dust and they were not sure what that white dust was. They brought it to the attention of the supervisor and expressed a concern. He told them to continue working, and they did so. When they finished working at the end of the shift, three things happened, and it is important to know that all of these things occurred.

First of all, the worker took his glove to the health and safety department staff, who came in in the morning, and asked for an analysis of the white powder. The second important thing that happened was with the supervisor. The supervisor took the existing duct that was cut down and all the scrap pieces, put them in a drum, had the drum welded shut and had the tow motor driver remove the drum to the scrap area for removal. The third thing that happened was the supervisor took an air hose that was in the area and blew away all the white dust that had gathered from the job procedure.

Twelve days later, an analysis came back on the particulates that were on the glove. I should emphasize the 12 days here, because a few weeks earlier there was a work refusal in the same plant regarding asbestos, but there was a stop in the assembly procedure. During that stop, again the particulates were sent away, but this time it only

seemed to take six hours to get an answer back. But during this case, because there was no stoppage of production process, it happened to take 12 days to get the results back. The results indicated 30 per cent chrysotile asbestos.

Thirty per cent chrysotile asbestos, with the amount of powder that was generated through the process under the designated substance regulations, required those two people to use what they call an SCBA, or a self-contained breathing apparatus, during the work process involved. Obviously they expressed their concern, and things did not happen.

Once those results came back 12 days later, the company decided to take some further tests in the area to see if any of this asbestos had been spread into the existing production areas. By that time, considering that this is a foundry area and that there was a lot of air supply ventilation, no traces of asbestos could be found in the area 12 days later.

However, the Ministry of Labour had to be consulted at this time. There was an asbestos exposure and under the regulations, it has to be notified. They came in to consult with the joint health and safety committee. After the discussions the inspector left two orders under the designated substance regulation. None under, per se, the Occupational Health and Safety Act, but only two under the designated substance regulation: (1) to analyse the material suspect prior to removal just in case it is asbestos, and (2) if it is asbestos, to follow the proper procedure as specified in the asbestos regulations and to remove that asbestos.

1420

Now I had a discussion yesterday morning with the supervisor of the health and safety department in that plant and I expressed a concern of the exposure. His indication to me was: "The worker had an option that he could have exercised, Moe. Let's not blame the company. The worker had an option he could have exercised. He could have refused to work." Now I have to pose a worker's dilemma to this committee. We are damned if we do and we are damned if we do not.

I would like to make mention that I am really not here to offer a rebuttal to any specific corporation's presentations, because I do not believe that is the idea that this committee is travelling around for. However, I would like to mention a few things that were mentioned to this committee yesterday. A specific company mentioned that its best approach to improved health and safety is to focus on accident prevention,

which is procedures followed by the Industrial Accident Prevention Association, and I am sure you have heard the IAPA submission by this time, and to educate and train people.

I would like to mention that in Ontario in the plants represented by this corporation in Windsor, London, Woodstock, St Catharines, Toronto and Oshawa, none of the second half of the workplace hazardous materials information system has taken place, in any of the plants. The WHMIS training, for the information of this committee, was to have been completed as of 30 June 1989. That is the emphasis that is put on training in that corporation.

The committees established that they refer to as long-time established prior to the regulations were established through the collective bargaining procedure and only because there was a strong, progressive union that takes precedence to address that issue on its agenda. Now the committee members are full-time, obviously because the representation here involved is anywhere from 2,500 to 8,000 people. To do that kind of representation on part-time would be impossible.

I would like to enlighten this committee to a presentation, a concern that was addressed specifically in a brief yesterday where the company indicated that the health and safety rep acted improperly, impacting on the company's ability to be a viable and secure employer. Again, allow me to develop a scenario.

A hazardous situation developed in the production process. After considerable discussion with the supervisor, workers refused to do the job. During the initial investigation, which was properly followed, an agreement was reached internally to divert the production system around the problem area for the balance of the shift. Part of that agreement by the supervisor and the joint health and safety committee was to have that problem addressed. Legally, at this point, as you are aware, the work refusal has been terminated.

This happened on the last shift of the week. The following week the health and safety rep received a call for a work refusal in the same area regarding the same problem. The reason for the work refusal was the same as the previous Friday. The company did not meet its commitment in the personal agreement to have the initial problem addressed.

Now, during the initial investigation again of the second work refusal, the supervisor recommended the same solution as he recommended the first time, which was to bypass the problem. The workers turned to the health and safety rep

for guidance. As you are aware as well, the health and safety rep cannot guide the individual workers. He cannot tell them what to do. He indicated that he could not instruct them and he could not direct them, but he did explain one thing. He did explain that if they agreed again, as they did last Friday, then their refusal is terminated again as it was last Friday and considered resolved. The workers decided in this circumstance to continue their refusal.

The Ministry of Labour was called in, and because this was his first involvement in this case—because the first refusal was terminated; the second one continued—he rendered the same decision as the supervisor did in this second work refusal, which was to bypass the problem, which was the same decision that was rendered in the first work refusal, to bypass the problem with an agreement that it would be repaired. However, he also left an order to the company to have that job repaired, an order that was not there the first time but should have been met by a mutual agreement.

The problem is, that all could have been avoided. No production would have been lost had the company had the repair work done on the weekend, as it promised in the first work refusal. But the importance of health and safety here, ladies and gentlemen, was clearly offset by the corporate financial restraint, since the job would require overtime for repair. After all, we know that the auto industry is presently in a recession and we cannot afford excessive overtime. Thank you.

The Chair: Thank you, Mr Kuzyk.

Did you wish to proceed, Mr Howes, or did you wish questions?

Mr Howes: Yes, if I could proceed, and then we can have questions for either one of us.

I wish first to thank the committee for the opportunity to appear before you and to have our voice heard on a matter, which we consider to be tremendously important and of great importance to the working people of Ontario.

The Labour Council of Metropolitan Toronto and York Region serves over 180,000 of those workers who are represented by more than 400 different local unions and operate in virtually every industry within our economy. We are affiliated with the Canadian Labour Congress at the federal level and with the Ontario Federation of Labour at the provincial level.

I would like to begin by saying that we categorically urge the adoption of Bill 208 with the series of 19 amendments that have been proposed by the Ontario Federation of Labour,

and I will go into the reasons for our position in a moment.

First, I would like to ask the committee to consider the statistics which sum up the present situation in this province with regard to workers' health and safety. I realize that your committee has now been on the road from one end of Ontario to another for almost a full month and have no doubt have had your fill of statistics, but I would ask you to bear with us briefly.

The relevant statistics, to us, in the area of workers' health and safety measure our success or our failure at achieving a healthy and safe workplace. I would suggest that they measure the consequences of our failure and that they are alarming.

According to the Workers' Compensation Board in 1989, Ontario saw 285 workers killed on the job and over 475,000 accident claims. Many thousands more workers suffered or lost their lives due to occupational diseases.

As workers, we too face these cold statistics, but we also see and feel the deaths and injuries of our brothers and sisters first hand. We have all of us here experienced occasions when we observed a minute of silence out of respect for a friend or a relative or a co-worker who has died. In many unions, it is something of a tradition at gatherings such as conferences and annual meetings and conventions to do this. More than once we have had occasion to mark the work-related death of a delegate to our labour council meetings with the traditional minute of silence.

I am not going to suggest that we do this here today. I will suggest, however, that the committee pause for a moment to consider that if we in this room today were to observe even one second of silence for each of the 285 workers who died on the job last year, we would remain silent for almost five full minutes. I would suggest to you that silence for that length of time would seem a deafening roar and it would serve to remind each of us in a most personal way just how serious is the matter before us.

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But we are not here today to mourn the dead. As you have no doubt heard before from our brothers and sisters in the labour movement, we are here to fight for the living. We are here to do our best to prevent the carnage in the workplace that we as workers in this province experience.

I began by saying that our labour council urged the adoption of Bill 208 with the amendments proposed by the Ontario Federation of Labour. It is important for your committee to understand clearly that the OFL speaks for the labour

movement in this province. Though we often have differences of opinion on how to approach issues inside our movement, we develop a consensus through discussion within the movement and then we authorize the appropriate central labour body to speak on our behalf. When it comes to dealing with occupational health and safety matters in the province of Ontario, the Ontario Federation of Labour speaks for our movement.

We have reviewed the extensive brief that has been presented by the OFL on the opening day of your committee's hearings and we endorse its contents. We will not try to duplicate or repeat their work but would just make a few brief additional comments.

In an executive board statement to the labour council delegates dated 2 March of this past year, 1989, our council joined other labour groups in Ontario which hailed Bill 208 as a major step towards protecting workers' health and safety. We were at that time commenting upon the original Bill 208 as it appeared when it was given first reading. We noted areas of improvement, which are encompassed in the amendments proposed by the OFL, but we were generally supportive of the legislation.

Then the government caved in to business pressure. Instead of the promised bipartite control over the training and certification of worker and management representatives, the government proposed to interject itself and proposed a tripartite arrangement, undermining the very fundamentals of the joint labour-management partnership and the responsibility of which the minister had spoken. The government also caved in to business hysteria over potential worker abuse of the right to shut down unsafe work—this in spite of overwhelming evidence to the contrary from jurisdictions as far afield as Sweden and Australia.

To revert to legislation which requires joint agreement between worker and management is to return to the status quo and, in effect, endorse a system under which a worker is killed on the job every working day of the year.

The last revisions to the health and safety legislation took place more than a decade ago. Since then, the appalling statistics which chronicle the pain and suffering of countless workers and their families as a result of workplace injuries and deaths have continued to grow. It is clearly not a time for the provincial government to timorously bow to the business lobby and to scurry for refuge in the status quo.

On behalf of the working men and women of Metropolitan Toronto and York region, I urge your committee to recommend to the Legislature the adoption of Bill 208 with its original concepts intact and with the improvements as recommended by the Ontario Federation of Labour.

Thank you for your time.

The Chair: Thank you, Mr Howes and Mr Kuzyk.

Mr Mackenzie: It is difficult when we have two, one dealing with some specific presentations made to us—even though Mr Kuzyk said it was not meant directly as a rebuttal, it certainly serves that role to much of the General Motors brief—and the other a presentation from the metro labour council and the position it holds in the community. But I guess I will go with the first question I had.

I just want to be doubly sure—although I understood from reading the facts that you presented us with yesterday exactly what was happening, and it is certainly a rebuttal, whether you intended that or not, of some of the testimony that was presented to this committee by General Motors. But I want to be clear on this asbestos incident that you referred to. What we had was a worker going to his supervisor because of the question of the material that he was operating with and being told to continue working, that it was not a problem.

Mr Kuzyk: That is correct.

Mr Mackenzie: At the end of that shift, at the time unbeknownst to the workers, supervision then collected the material they had been cutting, welded it in a steel drum and delivered it out to part of the waste materials area, I guess, in the plant.

Mr Kuzyk: That is correct. Also, as indicated in a submission given by the general supervisor from that area—the last two pages of the information that I submitted to you; it is just down around the last part—it said that the cupboard was removed from the scrap pile and stored later, but it was found buried in the scrap pile. This submission was indicating the day of 25 January, which is the first morning following the night of the incident. The incident was on the 11:00 to 7:00 shift; it finished at six in the morning. The cupboard was taken out into the scrapyards. The glove was given to the health and safety department, the health and safety department got hold of the general supervisor, the general supervisor went out into the yard, and it is coincidental and something that I am reading into it, the company tells me—I am jumping to

conclusions, I am told—that it happened to be buried in the scrapyard some three hours later.

Mr Mackenzie: You could almost call it concealing evidence. But it certainly indicates, as did the orders that were attached—and I hope all of the members of this committee read them—the fact that much of the argument that we received from General Motors just does not hold water. As a matter of fact, I would say it was blown to smithereens in terms of deliberate work refusals, that in many cases it was the supervisors and the lack of proper training of the supervisors and their not adhering to the regulations of the Occupational Health and Safety Act.

Mr Kuzyk: That is correct.

Mr Wildman: Just two very short questions. First, in the second scenario you described, if the health and safety rep had been a certified worker member, he could have ordered work stoppage, and then you would not have had the situation of another worker having to fulfil that task and having to have another refusal.

Mr Kuzyk: That could have been done, that is correct, in the first work refusal.

Mr Wildman: That is right. So they could have avoided a lot of the hassle.

Mr Kuzyk: That is correct.

Mr Wildman: Then, ironically, it would have benefited the company in that it would have at least got the thing fixed up.

Mr Kuzyk: They would have had it done initially as well. Even upon the agreement, had they acted on their part of the agreement, the problem would have been resolved without loss.

Mr Wildman: The other thing I wanted to mention, Mr Howes, is you mentioned in your presentation that on 2 March 1989 the executive board made the statement to the labour council joining other groups in hailing Bill 208 as a major step towards protecting workers' health and safety. Are you aware that on that very same date a letter was penned by Laurent Thibault, the president of the Canadian Manufacturers' Association, addressed to the Premier, in which he criticized Bill 208, particularly the stop-work provisions, the structure of the agency and what might happen to the safety associations, and concluded by saying: "I will be calling you early next week to arrange a meeting. I hope that changes to Bill 208 can be made before the ground swell of opposition by our members and others in the business community grows out of control."

Then in October 1989, the new Minister of Labour got up in the House and outlined

amendments to Bill 208 almost exactly along the lines of Mr Thibault's suggestions in this letter to the Premier. What does that tell you about the government's commitment to labour and to the consensus that is growing around Bill 208?

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Mr Howes: It suggests to me that the meeting that Mr Thibault requested certainly must have taken place and that certainly the views of the CMA were the ones which prevailed with the government. What we are suggesting is that this is a very, very serious bill to workers in this province, and given that it has not changed in the last 10 years, we cannot afford to let the opportunity to improve it and to consequently improve the health and safety record of this province go by. We cannot afford to have the bill, from its original state, watered down to the degree that the government is proposing.

The Chair: Mr Wildman, Mr Howes, Mr Kuzyk, we do thank you for your presentation this afternoon.

BOARD OF TRADE OF METROPOLITAN TORONTO

The Chair: The next presentation is from the Board of Trade of Metropolitan Toronto. It has been distributed to members. I think you know the ground rule of 30 minutes.

Mr Crisp: Mr Chairman, members of the committee, thank you for hearing us. I have with me on my left Jim Noonan, a barrister with McCarthy and McCarthy law firm, and he will help me in my presentation. Sitting in the audience is Jim McCracken, a staff member of the Metropolitan Toronto board of trade. My name is David Crisp. I am in human resources with Hudson's Bay Co, and you saw me yesterday as part of the Retail Council of Canada presentation.

It is my honour and privilege to represent the board of trade today. The board of trade represents 16,000 members in Metropolitan Toronto from many diverse businesses. I think it is fair to say that it is a very complex and mixed point of view with some very consistent and strong positions on certain elements of the amendment. I think it is also fair to say that many of the businesses are smaller and less sophisticated than some of the bigger units and particularly than some of the big unions that you have been hearing from. I think you should understand my remarks in that context, that we are speaking for a very broad range of types of businesses and attempting to make a joint

presentation on points that can be agreed to by this diverse group.

You have been given, I believe, a booklet that looks like this; it describes the board of trade on the back cover. If you would turn to page 1—I think it is actually the sixth page in—headed “Submission on Bill 208, An Act to Amend,” etc, “Introduction,” there are four issues highlighted there. “The Certified Person” really should probably be entitled “The Right to Refuse” issue. The right to refuse and the workplace agency are the key issues that we want to address this afternoon.

I want to begin by saying that in general we support the objectives of the legislation, that is, to raise the profile of health and safety issues and put a greater emphasis on resolving those kinds of problems in the workplace. However, the board of trade has taken a strong position that it continues to oppose the bill unless there are amendments specifically in at least these two areas: the right to refuse and the composition of the workplace agency.

We have a number of other subissues which are covered in the executive summary of this document, and I am not going to take you through them one at a time. What I will do is address the right to refuse and then the nonunion representation that we believe is necessary on the agency.

I will begin, if I may, by asking Mr Noonan to address the right to refuse.

Mr Noonan: Thanks, David. I, too, would like to express my appreciation to this committee for listening to us this afternoon. I expect that at least some of what we say will have been presented before this committee on behalf of other employers or employer groups in the past, but with the greatest of respect, it will be our submission to you that it, at the very least, bears some emphasis.

I should tell you just a little bit by way of background of my experience. Although I belong to a large law firm, I have done nothing but practise labour relations in a general sense for the last 20 years, and included in the scope of that practice have been fairly extensive dealings with the Occupational Health and Safety Act as it now stands.

Put simply, and I think Mr Crisp has already alluded to this, the membership of the board views certain aspects, at least, of Bill 208, even with the changes that would appear to have been suggested at second reading by the minister and to this committee, most apprehensively. I want to focus in on just one of those issues, and that is

this question of the certified person and the power of such a person or persons to shut down either all or part of a workplace.

First of all, I think I would do a disservice to the minister if I did not acknowledge the fact that in October some limited moves were made or would appear to have been made, by the government in its recommendations to this committee at second reading. For example, language was used that would indicate that in order for a certified member or a person to shut down all or part of the workplace, the apprehended danger would have to be a current one or an imminent one, whichever language you would choose to accept.

I would acknowledge, I think, on behalf of our members that that does help a bit in terms of the original formulation of Bill 208, but in my respectful submission to you, it really begs the point of the whole issue of that power to shut down part or all of the workplace.

The real question here is, even under the legislation as it now stands, all it takes is an honest belief in an apprehended danger for either a work refusal to take place under the current legislation or, under the proposed legislation, for the certified member to shut down an entire operation, to go to extremes. That apprehended, imminent danger, like beauty, and perhaps this is trite, must of its nature very much be in the eye of the beholder. Your subjective view of what is dangerous or the subjective view of a given worker as to what is dangerous or the subjective view of a certified worker of a given danger must, of its very necessity, I suggest to you, be a subjective view. Trite, I think, but true.

Accepting for a moment that that subjective view is what is going to prevail in this legislation, that if somebody has that reasonable, honest belief that he is in danger or that the workplace as a whole is in imminent danger, it is virtually impossible under the law as it now stands or under the proposed legislation to establish that whoever is making that decision is exercising it, to use the language of the proposed Bill 208, negligently or in bad faith because of the very nature of the decision. It is a subjective decision.

Even if, however, and I finally get to my point, ladies and gentlemen, you can establish that fact, that the person making the decision is acting in bad faith, for whatever reasons—labour relations reasons, political reasons, workplace reasons that are irrelevant to the issue or only peripherally involved with the issue of occupational health and safety—even if the person making that decision makes it in bad faith, the legislation as it

now stands provides absolutely no sanction for a misuse or abuse of that power.

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You say: "No. Hold on. There is a sanction. The employer can have application to the agency to have the particular individual decertified." That is the extent of the sanction, and I use the words loosely, ladies and gentlemen, as it now stands. That, with the greatest of respect, is a Pyrrhic victory for an employer, at best, after an employment workplace may have been shut down negligently, without reason, to the tune of millions of dollars because somebody else had an agenda on occupational health and safety or unrelated issues that was an agenda formulated in bad faith.

It is a basic tenet of our whole legal system, if I can suggest this to you, that with power goes responsibility. The bill as it now stands provides power to both of the proposed certified representatives, the employer and the employee representative. It is a big power, it is a large power, it can be a very destructive power, but it provides responsibility as the legislation now stands to the employer only.

That, if I could suggest this, is the biggest problem I have heard from my clients and I think from many if not all of the members of the board of trade. If that power is going to be allocated to each of the two certified reps as the bill now stands, why not include a specific sanction for abuse of that power? Why not recourse to such things as individual fines?

And again, we are talking about being able to prove that somebody subjectively was acting in bad faith; it is a very difficult thing to prove, but at least have the sanction exist in the legislation of such things as, I suggest to you, individual fines.

Why not, ladies and gentlemen, if the certified employee representative is put there by a union, some liability to the union if, again, you can establish to the satisfaction either of the Ontario Labour Relations Board if you put it in front of that forum, or in front of the agency, if it remains in front of that forum, that that representative of that union acted in bad faith or negligently? What is wrong with putting a sanction to the union that put that person there and gave that person the power to close a workplace down?

It is questions like that that I get from my clients that members of the board give to us and say: "Why not? What's fair in terms of an overall balance of power in the legislation itself." A cynical answer, I suppose, is to simply say that the union will never be given that kind of

sanction because it is politically unpalatable. I do not know. I am not a politician.

If that kind of sanction cannot be included in the bill, then I suggest to you other solutions to the problem which have been presented to this committee before. Shut down only on agreement of both reps or, failing that kind of agreement, shut down only on an inspector's order and set up the mechanisms so that such an order can be forthcoming in a reasonable period of time. Try an 800 hotline if necessary. Those are other solutions I would respectfully submit to you that might address this particular concern of most of the employers I have any dealings with.

I have not got time, and I am probably over my time, David, to get into the kind of anecdotal discourse that Mr Kuzyk was putting before you, but do not take it from me, go to your own ministry officials. The kind of abuse I am talking about under the present legislation has cost some employers, improperly, millions of dollars, where workplaces have been shut down under the legislation and, as it now stands, never mind the proposed amendments, for reasons unrelated to true occupational health and safety concerns.

All I guess I can really say to you is, if that kind of abuse can occur under the legislation, as it now stands, to extend the power that is proposed in the legislation to one individual as the legislation proposes, that is just an invitation, in some situations, to blackmail without sanction.

I will pass it back to you. I would be pleased to answer any questions you might have, if we have left enough time, at the end of our presentation.

Mr Crisp: I will try to be very brief on the question of the agency. Our brief was originally submitted to the minister at the time of the original, before the amendments to this that were suggested by the government. We wanted to say that the neutral chair concept was, we felt, a tiny step in the right direction of improving the agency if there is to be such an animal. But our larger concern was to have proportional non-union representation on the employee side and I am sure you have heard many of the arguments with respect to that.

I will just give you perhaps one more, perhaps one that you have not heard and that is very near and dear to the hearts of the smaller employer and midsized employer. Fundamentally, the bill increases the powers of individual employees as it is put forward, and with power inevitably develops a bureaucracy which is designed to support, encourage, channel, process effectively the powers that are created. Bureaucracy and the expense of it is one of the greatest enemies of

small business, mid-sized business, in our country. The advantage, at least, of having nonunion representation on the employee's side of the committee is that there will be some diversity of views in the matter, whereas inevitably most of the representatives on the agency will come from big business or big unions. There is a larger sense for diversity of opinion and diversity of representation if there are at least some nonunion employees in that group.

Having made that point, I will not go through all the others that people have made on the same issue, but I will re-emphasize finally the one point, that bureaucracy that goes with these things—adding the agency on top of the existing safety associations and so on; adding the right to refuse, and you can see even from our point of view the kind of bureaucratic process which would be required, in our view, to effectively exercise those rights with responsibility—all of that process is incredibly expensive. It is very difficult and very inappropriate in many respects to apply to smaller and mid-sized businesses.

The illustrations that we have heard just in the brief time we have been sitting here from bigger consolidated operations are essentially completely unlike the kind of process that occurs in even the larger of some of the stores in my organization where you have 100, 200 employees. It is a much more informal process and if you introduce the concept of right to refuse with the whole series of legal processes attached to it, you scare the daylight out of both the management and the worker representatives to the point where nobody wants to be involved with these issues at all, which is exactly counter to what all of us in this room want, which is a higher profile and a better process for resolving safety issues.

On that note, I will end that presentation. If there is time for questions, we would be pleased to assist. Thank you.

The Vice-Chair: We do have a number of members who wish to ask questions. We will start with Mr Carrothers.

Mr Carrothers: Am I hearing you say that if appropriate sanctions for misuse were added, the ability to stop work, the ability of the certified representative to stop work, would be acceptable?

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Mr Noonan: I would not go that far. I would suggest to you that if it is going to be the intention of Queen's Park to include that in the bill, at the very least there have to be appropriate sanctions put in there for the abuse of that power.

Mr Carrothers: Let me ask this then. We have heard from many groups now, I guess we have been having hearings now for a month, about difficulties in exercising the individual's right to refuse unsafe work, which exists in the law and has for some time now, and that obviously in very clear situations it is not a problem. But there are many circumstances that arise where various pressures and various fears come into play and it is very difficult for a person to do that, and perhaps individuals are undertaking work which they truly believe is unsafe because they are uncomfortable exercising their right to refuse.

This law is intended to support or buttress, if I could use that word, that individual person's right to refuse work with the creation of some committees, certified individuals in the workplace who focus and are trained in safety who might be able to assist someone's taking such a decision or, in some circumstances, perhaps make a decision on their own based on their experience and their own knowledge of safety.

If we do not follow that route to buttress the individual's right, do you have other suggestions that you could give the committee as to how we might strengthen that individual's ability to refuse work which they think is unsafe?

Mr Noonan: With the greatest of respect, I think the bill goes far beyond the right of a certified rep to assist someone, to consult with someone who might feel apprehension about a particular work situation. It goes far beyond that. Under the bill as it now stands, even if the bulk of employees who had no apprehension about the workplace at all, even if that were the situation, a certified rep could close the place down. It goes far beyond what you are suggesting the purpose is, as I understand you at least.

Mr Crisp: Perhaps I can respond more directly.

Mr Carrothers: If we start with the premise though, what would you do or suggest to strengthen that individual's right if we do not follow this route?

Mr Crisp: Perhaps I can respond to that. I think, certainly within the business I am in, the current practice is to have the incident investigated, when there is a question of the individual's right to refuse, by the most knowledgeable supervisor and the most knowledgeable employee safety rep on the floor, who may or not be the certified person, and allow that individual employee to have advice from both parties. With that kind of advice in place and the discussion that ensues, I find it hard to believe that most

individuals would not be able to arrive at a decision.

Mr Wildman: Just a couple of things. Contrary to your assertion, the Ministry of Labour has appeared before this committee and has indicated that the right to refuse since 1979 has not been abused in this province. As a matter of fact, many employer representatives have also said that. We had yesterday a presentation from Ontario Hydro. I will read part of it out to you.

It says: "When Bill 70... was first introduced in the 1970s, one of the major concerns that many employers had was the right to refuse unsafe work. All kinds of assumptions were made by the doomsayers that all work would stop and the province's production would suffer.... That simply has not happened. We have had some work refusals at Ontario Hydro for activities that were unsafe, and in most of those situations the employees were right. Major work stoppages, however, never materialized."

Mr Noonan: If that were the case, then of course you would have no reason to oppose the inclusion of the kinds of amendments I am suggesting. I am talking about amendments that protect, on the face of the legislation, against such abuse. If it never occurs, then there would be no reluctance, I would suggest to you, in putting that kind of amendment in.

Mr Wildman: On the other side of the coin, if it never occurs, why do it? If it ain't broke, don't fix it.

Mr Crisp: Was there a question?

Mr Wildman: I was responding to the last assertion. There is a question here. I understand that you indicated your concern about the growth of bureaucracy with additional power. Certainly big business and labour unions have bureaucracies, if you want to use that term, of people who are experts in the health and safety field. They would be able to support their representatives on an agency. If you were to have nonunion workers on such an agency, where would they get their support? Where would they get their information? Where would they get their advice about health and safety issues that were before the agency?

Mr Crisp: I would presume that people selected for that would receive at least as much training as that proposed for the certified persons and they presumably would be receiving practical experience on the job.

Mr Wildman: I see, okay. Now that is not quite the same as the kind of expertise that both

big labour, if you want to use that term, and big business would have on that agency.

Mr Crisp: I think my point, if I recall, was that by adding these individuals you would increase the diversity of opinion, the diversity of input, so you might benefit by having a different point of view than simply the two supposedly highly trained points of view. That is exactly my point.

Mr Wildman: Then you would be in favour of not having the experts added to the agency as has been suggested?

Mr Crisp: I have no problem with having experts there. I think you should also have people who are not necessarily regarded as experts there.

Mr Wildman: I see. Well, you know what an expert is. It is someone who knows more and more about less and less.

Mr Crisp: In many ways that is true, but there is a great advantage at times to having laypeople with intelligent, responsible attitudes in situations. I am not saying those would be the kinds of representatives, necessarily, but I think introducing another point of view would be essential.

Mr Wildman: The only final thing I would like to ask is in regard to your question about bad faith, again. I wrote down what I thought you said as you said it. You said, "If a person honestly believes there be a danger and exercises the right to shut down, there are no sanctions if that person has acted in bad faith."

Mr Noonan: I said negligently or in bad faith.

Mr Wildman: Negligently or in bad faith. Well, if the person honestly believes that there is a dangerous situation, even if that is a mistaken belief, how can that be negligence or bad faith?

Mr Noonan: It cannot. That is my point. I am saying the test to apply even the sanctions that exist in the proposed bill is so difficult to meet because so long as the person is acting in good faith, he is not in breach of the bill, nor should he be. But to go beyond that, where in those situations you can establish abuse, which is very difficult to do, why should there not be some accountability for that person who has abused the power that has been given to him by the new legislation? That is all I am saying.

Mr Wildman: And, finally, if there is a shutdown right, you do not want it to be unilateral by the worker. You would rather have it done in consultation with the employer.

Mr Noonan: Either a joint agreement to shut down or else an order by an inspector.

Mr Wildman: Would you not agree that the employer already has the unilateral right to shut down?

Mr Noonan: Yes, but there are obviously built-in disincentives for an employer for no reason to shut down the workplace.

Mr Wildman: Well, all I am saying is, if that unilateral right to shut down in safety issues now, and we are talking about safety, had been exercised appropriately by employers in the province, perhaps we would not have had as many as one death per every working day last year in this workplace in Ontario.

Mr Kozyra: Mr Noonan, I understand your argument and your concern for the power that the certified person has. I would like to pursue that to see how you would respond to this situation. Assuming the certified person, as a representative of the workers, sees as his primary responsibility the safety of those workers; from the power goes an awesome responsibility, the safety and lives of those workers, and I would assume that the workers see it that way as well.

I was just wondering, putting sanctions on it—I understand your argument—would that not create a situation where the person, in considering the health and, actually, the lives of those people, if the sanctions are severe enough, would tend to second-guess his primary concern and purpose there?

1510

Mr Noonan: I do not believe so, simply because the test before those sanctions could be exercised is so onerous. All that worker could say is, "I had an honest belief based on these three facts that the person on that machine was in danger and that is why I ordered it shut down." Unless somehow there was some extraneous evidence that established that he did not even have that honest belief, the sanctions would never be applied. I am saying it is only in those very extreme situations.

Mr Kozyra: So you are arguing for sanctions that are there, not as a big stick hanging over every certified worker—

Mr Noonan: Not at all.

Mr Kozyra: —but there to be applied only if it can be proven through a series of legitimate steps that there was definite negligence or deliberate intent.

Mr Noonan: Definite negligence or definite bad faith.

The Vice-Chair: Gentlemen, we have run out of time. There was another name or two on the

list, but we have a long list. I thank you very much for your attendance and for the presentation you have made.

Mr Ballinger: I would like the vice-chairman better if we could just maybe rearrange the front table there.

Mr Carrothers: While we are pausing, could I take a moment to wish Mrs Marland a happy birthday?

The Chair: Yes, please do.

Mr Carrothers: Happy birthday, Mrs Marland.

Mr Ballinger: Happy birthday, Margaret.

Mrs Marland: Thank you very much.

Mr Carrothers: We will not ask for any of the facts of the situation.

The Chair: Our next presentation of the afternoon is from the Ontario Forest Industries Association. I see an old friend in the name of Joe Bird coming to the table. We welcome you to the committee.

Mr Bird: Thank you, Mr Chairman.

The Chair: Mr Bird, we do welcome you to the committee this afternoon. I think you know the ground rules are 30 minutes for each presentation. You can take as much of that time as you want yourself or you can save some time for an exchange with members of the committee. We welcome you here this afternoon. If you would introduce yourselves, we can proceed.

ONTARIO FOREST INDUSTRIES ASSOCIATION

Mr Bird: My name is Joe Bird. I am president of the Ontario Forest Industries Association. On my left is John Valley, who is vice-president, corporate and board affairs of Boise Cascade Canada Ltd. John is also a past chairman of the Ontario Pulp and Paper Makers Safety Association. On my right is Doug McMullan, senior vice-president of E. B. Eddy Forest Products, from Espanola. You might be interested to know that Doug is a member of the tripartite committee looking into pulp mill safety.

It was our intention not to read the report, although I see some of you have just received it. Unless you have some objection, we would prefer to speak to it briefly, leaving plenty of time for questions. Is that all right that way?

The Chair: That is fine.

Mr Bird: Our association, Ontario Forest Industries Association, represents 23 member companies, which are all of the pulp and paper manufacturers and a number of the independent

lumber, board and veneer manufacturers. Our association, since its inception in 1943, has been a strong advocate of safety in the workplace.

We have been very interested in the evolution of Bill 208. We have followed with interest that evolution and we offer this presentation for your help in dealing with that important assignment. We deal briefly in the presentation with the various categories dealt with in the bill, and improved participation is first. There are some rather unique situations in the forest industry, particularly in the woods, where small employers will be involved in joint health and safety committees for the first time. The burden on those small employers for developing trained and qualified employer and worker reps, we hope, will not be too onerous and will be consistent with the specialized needs of that particular workplace.

We have dealt very briefly with and I know you have heard a great deal about broadening of the grounds for refusal to work. We have noted with interest that the proposed improvements to Bill 208 improve our comfort level a good deal with that new provision, whereby there will be some differentiation between immediate hazards and long-term hazards. We believe that will help to define the kind of work activity.

Dealing with the subject of effective authority, again, we look at the improvement to Bill 208 and note the proposal that the stop-work decision should be a joint decision, a joint undertaking by the certified employer and worker reps. We certainly support that situation, as opposed to the bill, which offers unilateral authority to do so. We think that this improvement to the bill reflects the true nature of the workplace partnership.

In the matter of determining workplaces with an unacceptable health and safety record, I am sure, Mr Chairman, you and the committee members will agree that that might be a little bit of a minefield, the judgement to determine the level of acceptability. We suggest to you that in the forest industry, both in the woods and in the pulp and paper mills, workers' compensation assessments are based on experience rating, and that experience rating system would perhaps provide the opportunity to classify those workplaces at either end of the scale, and those at the lower end of the scale, the poorer performers, would best have their performances improved by some prescribed treatment which might come from the Workplace Health and Safety Agency.

In the matter of compliance and enforcement, we in the industry never welcomed such measures as a 20-fold increase, to \$500,000, of the

maximum fine level for noncompliance. We recognize that there must be some such measure, but we believe very strongly that compliance achieved short of that kind of measure is going to be much more effective than that kind of big stick.

The bill deals with incentives and disincentives. We believe, again because of our experience with experience rating in the woods and in the mills, that the incentive-disincentive measures are in place. There is considerable evidence, and it is in the graph attached on safety performance, that the system is working. We believe that such incentives and disincentives should remain with the Workers' Compensation Board, where they are now.

On the subject of the Workplace Health and Safety Agency, you will notice that our submission is supportive of that initiative. We note with interest that the proposed improvements recommend a neutral chair—we think that is a big improvement over what is provided in the bill—and also the involvement of safety professionals. We submit that worker representation on the agency should reflect the organizational status of the workplace; in other words, that nonorganized workplace workers should be represented in proportion to their occurrence.

We believe, and our submission tries to demonstrate this, that the success and strength of the agency will be the success and strength of the sectoral safety associations. Those associations with which we are involved, Forest Products Accident Prevention Association and the Ontario Pulp and Paper Makers Safety Association, have been doing an excellent job for many years, and we think that those agencies, those associations, playing the proper role, will certainly add strength to the agency. We suggest specifically that those and other associations could be delegated by the agency such roles as the development and delivery of training programs, the development and delivery of education and promotion programs, the provision of consultative and research services for defined projects.

1520

Finally, we would like to talk about a provision in Bill 208 which is unique to the forest industry, a proposed redefinition of an employer in logging. We fail to see why the forest industry has been singled out for this redefinition. It is a matter of very, very serious importance to this industry. We would like to remind you, in dealing with this difficult situation, that the fundamental principle of Bill 208 is a workplace partnership of employers and workers, and we

certainly recognize that and we support it. You will note, looking at the accident prevention record in this industry, that there has been a great deal of success in recent years in reducing numbers of accidents.

You have attached to this submission a graph which indicates a 50 per cent reduction in the logging industry over five years. There are a number of other graphs supplementary which deal with the pulp and paper industry. We understand that Bill 208 purports to build on these successes of partnership in the workplace.

We fail to understand why one of the consequences of this redefinition, which would effectively distance the worker from the employer—we fail to understand what place such a proposal has in a bill dealing with occupational health and safety. The reality is that a redefined employer as one holding a crown timber licence would, in reality, be a company or a principal which could be located many hundreds of kilometres away from the work site, a work site which may be occupied by an employer who has a contractor, who has the authority to hire and fire, who pays his men and who is responsible for occupational health and safety under the current legislation. Transfer of that responsibility away from that bona fide employer, who is in day-to-day supervision of that workplace, to a crown timber licensee in a company office hundreds of kilometres away, we submit, would be counterproductive to accident prevention, and we urge you to avoid implementing that amendment, leaving the definition of an employer as it is in the act.

With that, I think that describes fairly well the presentation that you have. You will notice attached the graph I mentioned earlier indicating the five-year trend in injuries in the logging rate group and a list of our member companies, as well as the supplementary graphical information.

My colleagues and I would be pleased to answer any questions you may have.

The Chair: Thank you, Mr Bird. You are concerned about the definition of a logging employer and I am concerned about your reaction to that definition. Tell me if I am incorrect here or making unfair assumptions. Is it not the case that, particularly in the northwest—I would never accuse my friends at Eddy of this—there were contract loggers where the licence would be held by the pulp and paper company and the contract logger—I may not be using the right words here—would then provide wood to the pulp and paper company with the licence and very often was working by himself or with a few employees

and that many of those people were not covered under workers' compensation benefits? Is this the reason that this change has been made, do you think?

Mr Bird: I really do not know the reason that the proposed amended definition is in there. Through all of our inquiries, we have not had much success in finding why.

I would not deny that the kind of situation you have mentioned may occur, but again, I would refer you to that graph indicating a reduction in compensable injuries in logging of 50 per cent in five years. I think there is something very good going on out there and I think if there is a situation such as you mention, which I submit would be a rare exception, it should be dealt with as a rare exception rather than an all-inclusive measure such as this, which risks distancing the employer from the worker in situations where an effective accident prevention program is in place.

What we are trying to say is that you could well see a disintegration in the kind of record that we have seen over the last five years by distancing that responsibility.

Mr Valley: If I could add to that, the question of premium leakage is one issue. I think the question of safety performance is a totally separate one and should be kept separate. If there is a problem of premium leakage and coverage, then let's fix that in and of itself.

The Chair: I was linking the two, deliberately.

Mr Valley: I believe that if you set up a structure that would, in turn, result in a separation of financial obligation and safety obligation to the consumer of wood as opposed to the harvester of wood, then you remove the responsibility for safety one step and you remove that responsibility from, as Mr Bird described, the workplace of that particular activity. I think you ultimately end up with a lesser commitment.

Also, you have to realize that the safety relationship—and I speak from an organization where the members are virtually all purchased-wood suppliers. If that problem is there, then let us go back and fix that with our suppliers through the waiver-of-payment format with the Workers' Compensation Board or through some other mechanism. Transferring the responsibility will not do the job in terms of improving safety performance.

Mr Kozyra: I have sat on this committee as a substitute for about six sitting days, and over that time we have heard ample evidence or testimony

to the effect that during the time that the refusal to work has been in force—and we heard testimony from the Ministry of Labour, employers and the unions—there have been very few incidents, a very low percentage of what could be called negligence or frivolous refusal and so on.

I am wondering, in your estimation, what ingredients went in to make that system work and why now—and I assume most of those decisions were made unilaterally—you would oppose the unilateral right to shut down. Is there not the same transference of responsibility, the same mix? Are you saying that because the stakes are higher, in a sense, perhaps economically, if not in terms of life, that the unilateral decision-maker would be less responsible?

1530

Mr Bird: No, I do not think we are implying that, Mr Kozyra, although the danger could exist. I think what we are saying is that this bill is all about workplace partnership, and what place do unilateral decisions have in a workplace partnership? So we are pleased to see the extension of the partnership principle to this kind of decision.

Mr Kozyra: Okay. Just to go back, I am interested in what it was that made the original unilateral decision to refuse to work, work, and over the years to show it as something that could work and why it cannot transfer. Granted, I understand the partnership concept.

Mr Bird: The unilateral decision to decline work has been there, remains there and we do not have a big problem with that. We have not encountered a lot of difficulty with that in the years it has been there. I guess the problem I was referring to is the universal right to shut down an operation, and now that the proposed improvement extends that to both the employer and the worker representative, we feel more comfortable with it as reflective of the workplace partnership.

The other one, the individual; he has his individual rights. They have been exercised. We in our industry, with the responsible employers that we have, have not encountered a great deal of difficulty with it.

Mr Wildman: Joe, I have just a comment. One thing these hearings are doing is certainly helping out your industry; we are getting all kinds of paper.

Mr Bird: Yes, all the help we can get.

Mr Wildman: I have a couple of questions. I note that you said that you have not experienced problems with the individual right to refuse since it was established in law in the late 1970s in your

industry. That is a significantly different statement from the predictions that were made by members of your industry, among others, at the time the individual right to refuse was first debated in the Legislature then. I am wondering if the predictions now about the problems about extending the right to shut down might be as inaccurate as the predictions made by industry and business about the individual right to refuse were in the 1970s.

Mr Bird: I certainly could not deny that possibility, Mr Wildman, although we think the essential difference is that the decision to shut down the plant differs substantially from the individual's right to decline work. The unilateral decision to shut down a plant can affect a large number of other workers and, as we heard from one of the previous presenters, large numbers of those other workers might not feel affected or threatened. So I suppose there is always a certain amount of speculation as to the future results of a current initiative. We try on our part to present you with well-reasoned speculation.

Mr Wildman: Good. Thank you. I appreciate that it is speculation.

The other thing I wanted to follow up on was the questions raised by the chairman. Essentially we are talking about whether or not the definition of the employer should be the jobber, the contractor, who is supplying fibre to the mills or whether it should be the company that holds the licence on which the jobber is working. I am trying to understand your argument against another thing you said when you said that you were concerned about or hoped, at least, that the requirements for training committees, certified workers and so on, would not be too onerous on the small employer. Surely most jobbers are small employers. If you are concerned about things being too onerous on the small employer, would it not be helpful in resolving that issue to make it the responsibility of the company, usually a large company that holds the licence, for whom the jobber is working?

Mr Bird: Mr Wildman, we may have some oranges and apples in the basket here. If I could deal with the apples first, being the training requirements that we addressed. What we are seeing is—our presentation is quite strong on training and recognizes the importance of training. What we are seeing, for the small employer, particularly in logging; the work activity done by that small employer contractor is usually quite narrow and highly specialized. The training required by both the worker representative and the employer representative in that kind of a

specialized situation—the training requirements should be tailored to that particular situation rather than to a much broader situation which might involve a much more extensive and much more costly training program.

The other point that you make, that you started with, the contractor responsibility and relationship with the principal—and I think principal probably means about the same thing as crown tender licensee here, in most cases—the simple passage of responsibility to that principal, as we were trying to say, does not accomplish a whole lot when that principal is hundreds of kilometres away from the work site, a work site which may be managed effectively by an employer who happens to be a contractor. We see many examples of efficient, effective and safe workplaces in most situations and we would hate to risk deterioration of that record simply by shifting responsibility farther away.

Mr Valley: I would add to that, Mr Wildman, that, just as the question of leakage and safety are separate issues, there is also the question of deeming the licensee to be an employer. If you expect that licensee to discharge the safety training obligations, then I think it is only fair and right that the legislation also be amended to say that the discharge of that duty should not then be used as an activity that would be considered prejudicial in any certification hearing that might involve the co-employer concept. If that is maintained, then I think, to keep the certification ground level, I think that is—

The Chair: Would you allow a final question from Mr Dietsch?

Mr Wildman: Okay, just in response, I want to point out that this is not the only situation where we have this kind of a controversy. In the construction industry, the question of whether the overall contractor, while on a big project, or the subcontractors are the employers, is also an issue.

Mr Valley: We have debated that issue of the analogy between the construction site and the forest with folk within the Ministry of Labour and we frankly do not see that to be an analogous situation. One is a very compressed, single, geographic location and the others are dispersed in disparate activities that—

Mr Wildman: The head office of a large contractor may be hundreds of miles away from a construction site.

Mr Bird: The analogy that we have heard, Mr Wildman, is the construction of this publicly

owned stadium, with the prime contractor, Ellis-Don, right on the site.

Mr Wildman: That is true, but the head office was in London.

Mr Dietsch: I, too, was very much interested in that point, but I think you have covered it reasonably well. If I understand correctly, you are talking about the—you wish the contractor to be excluded, or the contractor to be covered, under the Crown Timber Act, to be—the individual who is the licence holder to be excluded, rather. Is that the way I understand it? Am I correct in my understanding?

1540

Mr Bird: In cases where the licence holder is conducting an operation of his own, of course he would be responsible.

Mr Dietsch: That is right.

Mr Bird: But we do not think he should be responsible for the contractor down the line, who is a bona fide employer in his own right, as by the current definition.

Mr Dietsch: In addition to that, whereunder then does that individual fall under the act; to be included under the act? I think that is the problem, the way I see it.

Mr Bird: Under the current definition that subcontractor is deemed an employer, under the current act.

Mr Dietsch: So you feel they are covered by the subcontractor provision? This is what you are saying?

Mr Bird: Yes.

Mr Dietsch: The last question I want to ask you is in relationship to—I realize the difficulty in developing a criteria, if you will, for designating what might be individual employers who are perhaps not as good with their safety record as other employers might be. It seems to me that in many pieces of legislation we try to define those who are not up to standard with all the others and try to stay away from penalizing those operations that are good, and we have had many of them make presentations before us.

I guess the question I have for you, with all the difficulty that the definition of a bad actor might have; in the event that it was able to be developed with criteria that spells out a number of things, not just the Workers' Compensation Board rating, but a number of other points, as well, that would be then acceptable to you if this kind of a criteria could be worked out?

Mr Bird: I guess if we could see some criteria that could be interpreted objectively, not too

many subjective judgement calls in the exercise. Of course, that is what we like about the experience rating system, because that system clearly identifies that those who have a better-than-average performance record are awarded a refund on workers' compensation assessments.

Mr Dietsch: Yes.

Mr Bird: And those below the line are penalized. So there is a clear distinction, and it is measurable and it is based on performance. There could well be other criteria just as objective as that.

The Chair: I am sorry, we are over time. We have not just used the time, but have gone over it. So we really must bring this to a halt. Mr Bird, on behalf of the committee, thank you and your colleagues for your appearance today. We appreciate it.

Mr Bird: Thank you, Chairman.

Mr Wildman: We are doing all we can to keep you guys in business.

Mr Bird: Keep it up.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair: The next presentation is from the Ontario Public Service Employees Union, affectionately known as OPSEU by some. Ladies and gentlemen, we welcome you to the committee. We have your submissions, numbers 265A, B, C, D and E, and we welcome you here this afternoon. If you will, Mr Clancy, introduce your colleagues, we can proceed. The next 30 minutes are yours.

Mr Clancy: Thank you very much. Here with me today, to my immediate left, is Mrs Rus Ransome, Mrs Tracey Ransome. She is the wife of Rus Ransome, who was killed by his work approximately a year ago. To her immediate left is Sheran Johnston, who serves on the executive board of OPSEU. To my immediate right is Bob DeMatteo, who is the co-ordinator of health and safety for OPSEU.

Mr Chairman and members of the committee, I just want to confirm that you have the Stellman Klitzman report and the letters to the minister that I wrote in 1986, trying to pursue and get some action from the government on the issues raised in the Stellman Klitzman report. You will note that there are no letters back from the government in that regard.

Also you have in your possession a brief prepared by OPSEU working with the Ministry of Labour inspectors, whom we represent. That brief is dated 1986. There is a report in your

possession, dated 1988—Queen's University is the author of the report—talking about injury rates in the Ministry of Health, in particular, in psychiatric hospitals across the province. In 1988 there is a report by Coopers & Lybrand, which deals with the incidence of injuries in the facilities, in particular, in the Ministry of Community and Social Services, the Ministry of Correctional Services and the Ministry of Health.

Let me begin by saying that around the world the winds of reform are blowing, as ordinary people cry out for a life of dignity and wellbeing. There are many leaders who have shown great courage and foresight by accepting the wishes of their people as being just and right. We are witnessing this in South Africa with the freeing of Nelson Mandela and the first steps of dismantling the ugly system of apartheid. We are witnessing this in eastern Europe with the institutionalization of glasnost.

Yet, in our little corner of the world, our leaders cannot accept basic reforms in occupational health and safety. Here we see reluctance, fear and suspicion of changes that would give working people a greater say about their health while at work. It is outright hypocrisy for leaders in our community to applaud these events in Europe and Africa, when they cannot put aside their own fear and self-interest for something as simple as this.

You have heard our business leaders express their opposition to giving workers a greater voice in workplace safety. You have heard our employer, the government of Ontario, oppose giving its employees the same protection as other workers. They all argue that employees will disrupt production and services and interfere with their right to manage.

What is worse, many of you have, and will, in my estimation, pander to those self-serving arguments. It is a sham to me, to our way of thinking in OPSEU, of the democratic process. Trying to sell quick fixes to the public is not going to do anything to change the fundamental problems that workers experience in trying to protect their health while at work.

We have a right to expect that you will take a serious view of what is happening to human health in our workplace and do something about it, and concern yourselves less with the financial health of the business community.

When the present safety act came into effect in 1979 we had great hopes that it would provide increased health and safety protection for our members. But our experience over the last 10 years has been a bitter disappointment. Over

2,500 workers were killed and more than four million were injured by their work in the last 10 years. During the same period, over 30 of our members were killed by their work.

In 1988 there were 12,372 compensable injuries suffered by our members in our major bargaining units. This represents a six per cent increase since 1980, at the same time that the workforce declined by over 10 per cent. A more alarming trend was experienced in work-related diseases. These claims climbed by 33 per cent. We have had members develop asbestos-related lung disease from exposure to asbestos insulation at Whitby Psychiatric Hospital. One worker died of this disease, and another just had part of his lung removed because of cancer. Another member died recently after contracting hepatitis from a patient at Lakehead Psychiatric Hospital. This lamentable loss of life is documented in our employer's own reports.

1550

A report prepared for the Human Resources Secretariat in 1988 by Coopers and Lybrand showed that the ministries of Health, Social Services and Correctional Services had the highest incidence of workers' compensation claims and lost days due to workplace accidents and disease. These ministries do not even have health and safety programs in place.

Similarly, a report prepared for the Ministry of Health by professors Anderson and Lees of Queen's University in 1988 showed that, of all the provincial ministries, these three, Health, Social Services and Correctional Services, had the highest rate of absence due to illness. The Ministry of Health leads all the other ministries with a whopping 12.35 days lost per employee per year. These three ministries far exceeded the national average of 8.6 days per employee as computed by Statistics Canada.

The Workers' Compensation Board experience with the Health ministry showed that psychiatric hospitals, with 56.5 per cent of ministry staff, accounted for 89.1 per cent of total WCB cost to the ministry and had the highest rate of lost time.

The report also corroborates the extent of patient assaults found by Stellman and Klitzman in their 1984 study. According to the Queen's report, the rate of patient assaults for each 100 beds increased from 37.1 in 1984-85 to 41.7 in 1986-87. It notes that at one hospital patient assaults rose from 100 in 1984 to 180 in 1987.

You have already heard from many of our members across the province about similarly alarming trends in workplace disease and injury,

so I will not go on. I am sure the committee is tired of hearing these gruesome statistics, and I fear they only desensitize us to the real human suffering that statistics alone cannot possibly tell us about. But they do tell us that Ontario's safety legislation is not adequately protecting the working citizens of this province, and that is what you, as their elected representatives, must address.

We thought these tragic trends would have prompted this government to introduce meaningful reforms. Instead the citizens of Ontario have been offered a pig in a poke when the government tabled Bill 208 in the House. It is not a step forward. It accepts the notion that the people who work in Ontario's workplaces are expendable Canadians. It does not deserve the support of the working people of this province, and let me list for you some of the reasons why.

No universal protection for all workers: Many thousands of working citizens in this province are denied any protective coverage under the current legislation. Bill 208 should have changed this, but it did not.

Public sector workers denied the right to refuse: Over 200,000 health care workers are restricted in their use of the right to refuse dangerous work. Several thousand police, firefighters and correctional services workers are completely denied this right of self-protection.

These restrictions are based on the assumption that they provide an essential service, and if given this right they might abuse it and endanger the public. This assumption is absurd, self-serving and not borne out by the facts. This has only reinforced the employers' view that the hazards in our work must be accepted without controls. In fact, these restrictions have actually been abused by our employer and endangered the public safety.

Krista Sepp, a young woman, a graduate of our education system in Ontario, 21 years of age, was brutally murdered while working alone. Just barely out of school, her whole life ahead of her, her career, she went to school because she wanted to work with this client group; she was brutally murdered in a group home. She would be alive today if she had had the right to refuse that work under unsafe conditions.

Ian Harris, Donald Contant and Russ Ransome, our ambulance workers, were killed in air crashes along with their patients and flight crews. They would be alive today if they had been able to refuse to ride in planes they thought were unsafe.

Ian Harris was in this very building a little over a year ago, in this very building, talking to MPPs at the time, talking in particular to Liberals, and talking about the need for protection. Here is a young man in his late 20s, dedicated to that work, trained in it, qualified, and he was in this building and spent the better part of a day talking to MPPs about the need for legislation to protect him and his colleagues.

He knew the conditions were unsafe. He had told his employer the conditions were unsafe. It is documented. And the employer's position—in this case the government of Ontario—to him was: "Tough. You either go to work or you are fired." He was here. Two weeks later, three weeks later, he boarded that plane and he was killed. Bill 208 should have repealed those exemptions and restrictions, but it did not.

Workers' ability to influence decisions not improved: The functioning of joint health and safety committees is a dismal failure. Few are even in compliance with the current legislation. They are toothless advisory bodies dominated by the employers' unfettered right to veto the concerns of their employees.

Bill 208 should have addressed this fundamental problem, but it did not. Requiring that employers give us their veto in writing within 30 days will not help to resolve issues. Requiring that employers develop health and safety policies unilaterally will not enhance our ability to influence decisions crucial to our health. The bill could have provided mechanisms that could play a major role in encouraging the resolution of health and safety concerns.

The right to shut down unsafe work could not only provide protection for workers but also prompt employers to be proactive. If Ian Harris had some ability to go in to his employer and say, "Look, I am not getting on the plane unless you deal with these concerns and they are documented," he would live. But just as important, it would force the employer, instead of that concern being number 15 on the priority list or number 35 on the priority list, to bump it up on the agenda. It would get action.

It should not surprise us. That seems to me the way it works quite often. Certainly in your constituency offices you will appreciate the squeaky wheels and how people have to take action to get attention. The bill's restrictions on the right to refuse have made this a mere symbol and a liability to anyone who dares to use it.

The bill could have removed the weaknesses in the individual's right to refuse dangerous work. It is used very rarely in this province because of

these weaknesses. Last year, it was used only 427 times. That is rare, given a workforce of over one million and the current rate of injury, illness and fatality.

But Bill 208 will further weaken this vital right by providing payment only during the employer's investigation of the refusal. If a worker rejects the employer's findings and continues to refuse and calls for an inspector, then the pay stops. This, in effect, takes the right to refuse away from all workers, and Bill 208 will still allow employers to assign another worker to perform work that a worker has refused.

1600

Providing worker committee members with greater initiatives in monitoring the workplace would have enhanced hazard control, but instead the bill limits total workplace inspection to once a year. Enabling worker committee members to issue provisional improvement orders could have provided incentives for employers and joint committees to resolve issues in a timely fashion, but Bill 208 did not do it.

Appeal system not independent: We currently appear before the director of appeals, who is a ministry-employed lawyer. The lawyers who have assumed this position are the very same people who developed the legal opinions upon which the inspectors base their decisions. They are one and the same.

These people are not occupational health experts and have no ability to address substantive health and safety questions. They rely for the most part on the same expertise in the division which informs the inspectors' decisions. This appeal system is not independent and it lacks objectivity and expertise in occupational health. As such, it offers no assistance in resolving health and safety issues.

Bill 208 should have established an independent appeal system that could have provided a credible and accessible process for resolving disputes. This could have enhanced the functioning of the internal responsibility system. Bill 208 did not do this.

Regulatory power to take away workers' rights: Bill 208 also gives the government some alarming regulatory powers. Under this provision, the government can arbitrarily exempt whole groups of workers from the right to have joint committees, the right to be trained and certified, and the right to shut down unsafe work.

In effect, even these flawed and weak provisions which had been granted to workers through the open, democratic process can be taken away by whim of cabinet without public debate. It can

even regulate whom a union can select as its representative to a joint committee. This is a direct assault on the union's democratic process.

No enhanced enforcement by inspectors: Deep-seated problems exist in Ontario's health and safety enforcement system. We have witnessed 10 years of complaints from workers across this province about the lack of adequate enforcement.

In 1987 a special internal review of the system by Geoff McKenzie and John Laskin documented incidents of delays of up to two years, division managers subverting inspectors' orders, too many repeat orders, missed court dates, political interference, and even negligence. But McKenzie and Laskin were able to excuse this dereliction of duty because the ministry was carrying out the self-compliance philosophy of the internal responsibility system.

These self-serving conclusions from two prominent representatives of the business community were at odds with independent studies conducted by the Advisory Council on Occupational Health and Occupational Safety, the Ontario Law Reform Commission and the Provincial Auditor. They were also at odds with the recommendations and findings of successive coroners' juries.

The law reform commission paper 53 summed up these findings best when it stated that the major weaknesses in the internal responsibility system lie in "the generally advisory and consultative role of the committees." It also noted that "internal responsibility cannot be expected to replace a more conventional regime of externally imposed and enforced regulatory controls...or to function effectively without supports from such a system."

At each of these hearings you have heard employer after employer argue for a self-compliance approach to workplace health and safety. They have tried to convince you that things are working well, so do not upset the apple cart with strong enforcement. We have even heard members of this committee sympathize with these business concerns. But you know this is not true. As the alarming record of workplace illness, injury and death shows, the system of self-compliance is not working. In fact, it amounts to granting employers a licence to kill and maim workers.

Bill 208 does nothing about this. It establishes a business-as-usual philosophy with a little more window dressing. Raising the maximum fine to \$500,000 means little, when the average fine imposed under the current \$25,000 maximum

amounted to \$2,346 in 1987. It means little when the current success rate for prosecution is a little over 60 per cent, when well over 60 per cent of all charges are either dismissed or withdrawn and when most prosecutions are initiated only after an accident occurs.

We see nothing in this legislation which will enhance enforcement and the role of inspectors in the workplace. In fact, we have every reason to believe that this bill is designed to reduce the regulatory role of government in the workplace without any effort to strengthen internal enforcement.

Bill 208 could have built up the enforcement system. It could have armed inspectors with a system of civil penalties to deal with contraventions to supplement court prosecutions which are slow and costly. It has done nothing to oblige inspectors to issue orders and impose sanctions. In fact, this goes against what the public wants the government to do. The bill goes against what the public wants to do in this area.

According to a recent public opinion poll conducted by Vector Public Education Inc, 83 per cent of Ontario adults thought that jobs would be made safer if employers were made to pay big fines for unsafe conditions and more government inspectors were available to check for job safety problems before the fact, not after the accident.

The Workplace Health and Safety Agency, what we describe as the great training robbery: Bill 208 puts great emphasis on health and safety training. Indeed, with all due respect, the speaker who spoke before me, and I had the privilege of listening to part of his presentation, said in his own words that his emphasis is on training and a lot of talk about training and emphasis on training. No one would argue that training is not important, but it is difficult to see how this emphasis on training fits in with the rest of the provisions in the bill or how this is supposed to address the real problem.

It is one thing to provide people with knowledge about workplace hazards, but knowledge in itself is not sufficient. People also need the power to act on the knowledge that they have acquired. It is not enough to know what is wrong and how to fix it, and it is hard to see a rationale for all this training since the powers provided to workers are nonexistent.

Training funds under the bill will be largely absorbed by the several employer-based safety associations, associations which are administratively top-heavy and ineffective. It is hard to see how labour will get an equal share of these funds and maintain the independence of its own

training centre, a centre which has a proven track record of cost-effective delivery.

This agency envisaged under the bill will also be given responsibility to discipline and decertify joint committee members. We find it interesting that the government that loathes to penalize and play policeman with the business community when it comes to health and safety has no problem with doing this when it comes to workers.

Loss of public accountability: There is another alarming aspect of this proposed agency, since it is expected that the agency will take over the enforcement and administrative authority currently exercised by the Ministry of Labour.

It is our view that such an initiative is an abrogation of government responsibility to regulate a critical area of public health. The transfer of this area of public health regulation to a constituent agency will seriously compromise public health standards.

Under this scheme of things, who will be held publicly accountable? Is it not a means for the elected government of the day, regardless of who it is, to insulate itself from the growing criticism for its failure to regulate public health adequately? It is a deodorant, in our estimation, for lax enforcement.

In conclusion, Bill 208, as introduced by Labour Minister Greg Sorbara on 24 January 1989, is not an attempt at reform. It is a political gimmick devised by the government to protect the status quo with the rhetoric of change. It is a charade. The recommended changes introduced by his successor, Gerry Phillips, constitute a bald confirmation that the government has no intention of introducing meaningful reforms.

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Bill 208 could be called reform only when labour's amendments have been incorporated. Only then can we truly say that we have legislation that is meant to protect the health and safety of workers. And only when we have this for our members can we in good conscience enter into a partnership as equals.

Our union will not lead its members to the slaughter. We cannot agree to anything less. Here to tell you why is one person who has suffered the grievous loss of a loved one in a workplace tragedy.

Tracy Ransom is the wife of Russ Ransom. Russ was an ambulance officer who drowned after the plane which was carrying him crashed into Lake Erie off Pelee Island. The husband of the patient he was caring for died and a member of the flight crew was also killed. Here is a

situation where death is an act of—you have to understand the young man, committed to his work, a professional. You need the qualifications, have to meet the standards, so here he is doing his job, likes his work, committed to his work, and again we run into the situation where the issues, the concerns, are not new to the government, where the workers raised the concerns and said: "Look, this isn't up to scratch. We need protection here. We need training here. In this case, we need emergency equipment on these planes."

This issue has been brought before the government and it refused to act. They tell him: "If you don't get on the plane, you lose your job. I just treat it as insubordination—dismissed. So he boards the plane, the plane takes off and crashes 400 or 500 yards off from the shore. There is no flotation equipment in the plane, no training, none of the basic stuff that everybody has been talking about for a decade. Ambulance officers in Ontario have been talking about this issue and formally raising it with the government for a decade. The government keeps responding that emergency workers, health care workers, correctional workers, all these hundreds of thousands of these workers in Ontario are an essential service.

I do not understand. It confounds me. How many times do they want to penalize them? They cannot win for trying. And nothing in the bill deals with that.

That concludes our presentation and we are open to questions. Mrs Ransom is prepared to talk to you about what it is like to receive the phone call that says that your husband is killed, and her daughter is two or three at the time. I think at this point that completes our presentation and members of my delegation are open to questions. Thank you very much for your time, and we appreciate the opportunity to present to you today.

The Chair: Thank you, Mr Clancy. We are virtually out of time. There is time for maybe—I wonder if Mr Wildman and Mr Kozyra could each ask a short question.

Mr Wildman: I have just one question. Mr Clancy, what does it do to the morale of your members to have your employer, the government of Ontario, give your members the responsibility to look after the safety and health of patients, inmates and challenged people in this province but not think that your members have the responsibility to exercise the right to refuse unsafe work responsibly.

Mr Clancy: Those jobs are difficult at the best of times. It is more than people picking up a paycheque. My experience has been that people are schooled in that work and so on and so forth. They are committed to the client group and they take pride in their work, so the initial reaction is that it is a loss of dignity, it is a loss of pride and it is insulting. That is what happens. But then what follows that, after you have gone through that a few years, is you realize that you have to take some stronger action. You keep talking to them, you keep talking, you take stronger action. In the corrections dispute we had what the government described as an illegal strike. I will not describe it as that because the next time I say something they will throw me in jail for longer or something, right? But we had a job action in corrections last year and one of the fundamental reasons why it reached that point is because those issues could not be addressed, the government would not address them under law, it would not give us the opportunity to address them.

I suggest to the committee today—I predict this today—that in the psychiatric hospitals and in the mental retardation facilities across the province we will have a similar dispute. I have spoken to the government repeatedly over the last six months about this, that whether it be this month, next month, this fall, next spring, I predict that if there are no changes in health and safety they will take illegal action. I have spent the past number of years, and particularly the last three or four years, trying to persuade this government, especially after the announcement that it was going to reform health and safety, that it has got to do something. There has got to be a mechanism there.

Mr Kozyra: That was a very powerful, emotional presentation, and if I may editorialize a little bit, with a kind of train of cynicism as well, maybe rightly so from your perspective. Could you clarify for me your thinking on page 12? In reference to the raising of the fines to \$500,000 maximum, you say it means little and you question the current success rate in the process of prosecution as well as charges dismissed or withdrawn. As I understand it, the charges dismissed or withdrawn are in the legal process. Are you here questioning the integrity of the legal process on a basis that if you do not get 90 or 100 per cent conviction then something is wrong? Do you not have any faith in the blind and fair justice that weighs the—

Mr DeMatteo: The problem has to do with the way court system is structured. Bear in mind—

Mr Kozyra: So it is rigged too?

Mr DeMatteo: No, we did not say that. If you want to call it that, that is fine. I certainly would not besmirch the courts as you have. The problem with the courts is they really just do not understand the health and safety questions. Bear in mind the courts deal with criminal matters in many instances so that they are dealing with somebody who intentionally killed someone else or somebody who intentionally injured someone else. They tend to look at workplace accidents in a somewhat less serious way because it is not seen as an intentional act. That is what we are driving at and I think that is the problem. That is how I am trying to explain it to you.

The problem is, however, when we look at the structure of the fines and what courts are willing to assess in fines for very serious things like the death of workers, I think you would have to agree with me that a fine of \$2,000 in the death of a worker is a statement that life is cheap. That is basically what it is saying. There are difficulties. I am not simply blaming the court system itself. It has to do with the system that makes it very difficult to get prosecutions, for example. They are very costly processes. They take an awful lot of time. You do not get an expedient type of process that responds to it and there is not a great deal of expertise within the courts themselves to deal with the health and safety questions. That is the nature of the problem.

Mr Kozyra: Thank you for the comment.

Mr DeMatteo: I would not besmirch the courts as you have. I am surprised that members would be taking such a view of the courts.

Mr Kozyra: I did not. I had a question.

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Mr Clancy: Two quick points, if I might: I would invite you to read that 1986 report, which we have tabled with you, compiled by ourselves and the inspectors. I think you will find it fascinating in light of your experience over the last number of weeks on this committee. If you have not had an opportunity, it is a short read.

The second point is the question of the attitudes. Let's use the analogy of drunk driving where you have had the laws in the books for years and people go into court, repeat offenders, once, twice, thrice, so on and so forth, and get off. I think you would agree with me that today governments in western democracies have had the political will to say, "Look, even working within the existing laws, you're going to move those fines to the maximum, whatever is permissible under the law."

Just to build on the point Bob is making, it is attitudes and it is political will and it takes governments with political will. If there were 300 people killed in Ontario in air crashes, one a day—let's take one a day—for a year, in air crashes, do you think that they might be moving quickly to find out why and to change whatever is necessary? You are gosh-darned right they would.

The Chair: I think that we are going to have to call this to a halt because the committee does have an agreement for 30 minutes per presentation and you have taken all of that. Mr Clancy, thank you very much you, and your colleagues. Mrs Ransome, I know it was difficult, but we appreciate your presence here today.

ONTARIO MINING ASSOCIATION

The Chair: The next presentation of the day is from the Ontario Mining Association. We welcome you to the committee this afternoon and we look forward to the next 30 minutes, which are yours. Mr Reid, your colleagues are known to some of us, but perhaps not to all of us, so would you introduce them.

Mr Ballinger: They are obviously not very fussy of the company they keep, are they?

The Chair: I would not touch that line.

Mr Reid: It is called rehabilitation.

Mr Rickaby: My name is Andrew Rickaby, I am chair of the Ontario Mining Association. I am also vice-president of uranium operations for Denison Mines Ltd. With me today is Patrick Reid, president of the Ontario Mining Association, and John Blogg and Bruce Campbell. We welcome the opportunity to address this committee and to present our thoughts and our brief on the legislation, which we believe is critically important to our industry. Having said that, I would pass to my colleague Patrick to give the brief.

Mr Reid: Thank you, Mr Rickaby. I am just going to read selected parts of this. That should cheer everyone up.

The Ontario Mining Association has been promoting health and safety in mines since our inception. Most recently, we have promoted the internal responsibility system which was introduced by James Ham in his royal commission report of 1976. Since the IRS was introduced to our industry first we feel our members know it better than most other employers in Ontario.

Our history of joint management-labour involvement in solving problems of health and safety illustrates our commitment to the IRS

principles espoused by Ham and supported by Burkett. This commitment is no more clearly evident than in our record of improvement over the past 14 years, during which time the mining industry has enjoyed a reduction in lost-time injury frequency of 80 per cent, from 12.2 in 1975 to 2.4 in 1989.

You know what the minister has said this bill will accomplish. This presentation will provide comment on the IRS and eight subjects where we feel improvements are needed for Bill 208 to meet those objectives of the ministry.

The internal responsibility system: Although the OMA is supportive of the intentions of the Minister of Labour, we continue to have a problem with the general philosophy and direction of Bill 208. We believe that the health and safety of workers is only enhanced through Ham's IRS model. This model for the safe performance of work has been supported by three subsequent reports to the government: the Burkett report, the McKenzie-Laskin report and the Laughren report.

Bill 208 appears to be attempting to redistribute power in the workplace in the hope of improving safety whereas the IRS promotes safety through the clear delineation of authority of the workplace parties in accordance with their roles and responsibilities in the safe performance of work.

We are aware of some opposition to the IRS. However, we must agree with the McKenzie-Laskin report, which concluded that the IRS offered the best assurance of long-term improvement in workplace conditions. Further, we point to the record of our industry as proof that the IRS works.

The minister has stated that the foundation for safety legislation in Ontario is the IRS. However, the language of sections of Bill 208 is inconsistent with that of the internal responsibility system; for example, the section detailing the role of the certified worker representative, which we will discuss later.

The OMA believes that for Bill 208 to succeed in its objectives, its language and reforms should be consistent with those of Ham's IRS model. Bill 208 should encourage the successes demonstrated by those companies and industries which have developed the co-operative labour-management environment envisaged by Ham, rather than the confrontational environment which the current language will undoubtedly produce without some major changes. In the example of the powers being granted the proposed certified worker representative, Bill 208 wrongly gives

the certified representative direct responsibility while Ham correctly gives him contributive responsibility, since he is not directly involved in the safe performance of work.

Ham stated that there was no place for the adversarial system of collective bargaining in dealing with matters of health and safety. The OMA believes that with Bill 208 going outside of the IRS, with respect to legislating powers to the certified worker representative, it is introducing an adversarial approach to health and safety inconsistent with the very system it purports to embrace. Therefore:

Recommendation 1: The committee should review the Ham Report of the Royal Commission on Health and Safety of Workers in Mines; the Burkett Report of the Joint Federal-Provincial Inquiry Commission into Safety in Mines and Mine Plants in Ontario; the McKenzie-Laskin Report on the Administration of the Occupational Health and Safety Act, and the standing committee on resources development Report on Accidents and Fatalities in Ontario Mines. Table 51, the internal responsibility system for the safe performance of work, presented by Ham and followed by the Ontario mining industry is attached for the information of the committee.

Recommendation 2: The minister should confirm the government's commitment to the philosophy of self-compliance and the principles underlying the internal responsibility system.

Recommendation 3: The bill should amend the act to include, as a preamble, an appropriate description of the philosophy of self-compliance and table 51, the purpose and structure of the internal responsibility system.

Recommendation 4: Bill 208 should be amended wherever the language is inconsistent with the spirit and practice of the internal responsibility system.

The health and safety agency: We know you have received other submissions on this. We will simply read the recommendation which is:

Recommendation 5: The OMA remains convinced that for the proposed health and safety agency to become an objective voice, it must have participation from all sectors of the province's employer and employee communities. We therefore recommend that workers and managers of nonunion workplaces be represented on the board of directors of the agency.

The safety associations: Similarly, we will read the recommendations.

Recommendation 6: We recommend that the minister leave the responsibility for the operation

of the safety associations solely with their labour-management board of directors.

Recommendation 7: We recommend that the proposed section 10 of the act, contained in section 6 of Bill 208, be amended by deleting the following sections—you all have copies of page 15. I will not read them all.

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Stop-work: We believe this is one of the fundamental matters raised by Bill 208 and we feel there are a number of misconceptions around this. The OMA has continued to express serious concern with the language of Bill 208's stop-work proposal. The term "stop-work" has been used to mean different things to different people, dependent on the user and his or her audience. Since 24 January 1989, this has created confusion between workplace parties.

Therefore, the OMA believes that the Ministry of Labour should include in the bill a clear definition of "stop-work" which would indicate the differences between the bill's stop-work language and the individual right to refuse unsafe work. Further, Bill 208 should include a process for each to ensure that all parties know which section of the act is being invoked at the time of a work interruption.

The OMA views stop-work as an extension of the rights and obligations of the individual currently found in section 23 of the Occupational Health and Safety Act, refusal to work where health or safety in danger, and believes that the stop-work language as used in Bill 208 means the stopping of work by a third party on behalf of a worker who has not found the particular situation to be unsafe.

We believe this is the key point. We believe that the language of Bill 208 should clearly state that the individual has the primary right to refuse work which is unsafe and that stop-work action occurs only after the individual worker has had the opportunity to exercise his individual rights under section 23 of the act. The OMA does not wish to see those rights superseded by a third party, which Bill 208 currently permits. This situation will create an atmosphere of mistrust between the workplace parties of this province, contradictory to the promotion of the stated objectives of Bill 208.

Further, the minister and others have gone on record as supporting the concepts of the internal responsibility system as found in the Ham report, which reviewed health and safety in the mining industry. Having said that, it is a surprise that the language of Bill 208 on stop-work does not fit the concepts of the IRS. The IRS makes a clear

distinction between those workplace parties who have direct responsibility and those who have contributive responsibility and their roles. Since the worker has direct responsibility and the proposed certified worker representative has contributive responsibility, Bill 208 cannot be silent on this and still hope to strengthen the authority of the workplace parties. The stop-work section of Bill 208 must fall within Ham's IRS model.

The mining industry is the leader in the use of Ham's model of the internal responsibility system in Ontario. We have worked with this concept and attained a level of worker participation and associated injury reduction results which we feel qualifies us to recommend to the government improvements to the stop-work language. We believe that better language will alleviate what we view as the current misunderstandings.

Let us first say that our experience has taught us that good labour relations and employer commitment are precursors to the successful implementation of worker representatives. Second, we feel that many industries will need time to become fully conversant with the IRS, particularly table 51, before the certified worker representative concept can successfully work.

Recommendation 8: Therefore, the OMA suggests the following language for the consideration of the committee. We feel this language more accurately addresses the issue of stop-work and the role of the certified workers representative in the context of Ham's IRS model.

"23a(1) A certified worker health and safety adviser who finds that,

"(a) a provision of this act or the regulation is being contravened;

"(b) the contravention poses a danger of a hazard to a worker; and

"(c) the danger of hazard is such that any delay in controlling it will cause serious risk to a worker,

"shall advise the worker that he is,

"(i) working unsafely; or

"(ii) working in an unsafe environment.

"(2)(a) A worker who agrees with the certified worker health and safety adviser that he is working unsafely or in an unsafe environment shall stop work as prescribed in section 23.

"(b) A worker who does not agree with the worker health and safety adviser that he is working unsafely or in an unsafe environment shall report the circumstances to their employer or supervisor."

What this means is that if a worker adviser tells a worker he is working unsafely, the worker has the option to (1) exercise his right right under section 23 to refuse to work, or (2) to notify his supervisor that there is a disagreement. If the supervisor agrees with the worker adviser, he can tell the worker to stop. This is consistent with IRS. For those occasions when the worker adviser is overruled by the worker and supervisor, it may be desirable to have an appeal procedure for the worker adviser. However, our experience is that in practice this will seldom, if ever, be necessary.

Certified worker representative: The subject of certification is one which has raised many questions from the employer community; most particularly, who is to be certified, who selects the person for certification, who is best qualified to develop the certification course and who pays the cost of certification?

The thrust of Bill 208 is towards the assurance of adequate training of all workers in health and safety. We do not see this occurring with the certification of selected workers in the workplace. There is also potential for this certified person to assume more knowledge than is recognized in Bill 208, thus encouraging unnecessary disputes with more qualified safety people in the workplace. This, we feel, would do a great deal of harm to the advancement of health and safety and detract from the promotion of a spirit of co-operation in Ontario's workplaces.

The wording of sections 14, 15 and 16 of the current act, when applied, provides workers with the necessary information to protect their health and safety. We would like to see the sector safety associations, in co-operation with the health and safety agency, develop and deliver to workers a number of certificate courses. The certified representative could then be chosen from a pool of workers in each workplace who had successfully completed a specified number of certificate courses. This would ensure two desirable situations: (1) a pool of qualified worker representatives to serve as a certified worker representative; and (2) the assurance of the required education and training for all workers of the hazards in their workplaces.

The current bill does not recognize those safety people in the workplaces of Ontario who have acquired specialized training in the field of health and safety and the promotion of injury and illness prevention. The OMA believes that the qualifications of these people should be more than sufficient to warrant the certified criteria. Further, we feel that the criteria needed to receive

a designation such as certified engineering technologist and Canadian registered safety professional be considered in determining the educational criteria for the proposed certified worker representative.

There is a concern expressed by some of our members that the certification process as proposed in Bill 208 may cause workers to be less diligent in the fulfilment of their responsibilities to their own safety. Improved application of the current act, with the assistance of the Ministry of Labour, and increased education of all workers through an improved certification model, is encouraged. We need every worker to act and be responsible for his own safety.

Recommendation 9: The OMA believes that workers' training and education should be the focus of the legislation for a safer workplace. As such, Bill 208 should serve to enhance the current act's requirement for providing workers with information and education. We do not believe that the role of the certified worker proposed in Bill 208 does this in any meaningful way and recommend the concept be reworked.

Recommendation 10: We recommend that the education and certification of all workers, perhaps through the use of industry-specific modular training programs, be developed by the safety associations in accordance with guidelines set by the health and safety agency.

Recommendation 11: We recommend that people who can prove to have received specialized training in health and safety through the successful completion of a university, community college course or professional accreditation from a recognized body of professionals be recognized as being certified.

Recommendation 12: We recommend that the criteria required to obtain the designation of a certified engineering technologist or Canadian registered safety professional be considered in the establishment of the criteria for the certified representative designation.

Recommendation 13: The cost of increased education, particularly certification, has not been clearly addressed. We recommend that the government pay for all incurred statutory certification costs.

Recommendation 14: We recommend, in the event of certified worker representatives, that the selection be a joint process between the workplace parties, thereby encouraging joint responsibility action.

Recommendation 15: We recommend that there be preconditions to the selection of a

certified worker representative. Four of the conditions should be that the candidate is: (1) a worker who does not hold a union office, as recommended by Ham and Burkett; (2) a worker who has displayed problem-solving skills; (3) a worker who has demonstrated a commitment to health and safety through the successful completion of a specified number of certificate courses; and (4) a worker chosen from among the workers of the workplace in which the duties of a certified worker adviser are to be performed.

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Recommendation 16: We recommend that the term "certified worker representative" be changed to "certified worker adviser" to more clearly identify the role as one of contributive responsibility, as defined by Ham, supported by Burkett and McKenzie-Laskin, and most recently recommended by a subcommittee of the provincial Mining Legislative Review Committee made up of labour and management people.

The good/bad employer: As you know, the act refers to this, but it does not define what a good or a bad employer is. We are recommending that language already exists in the Workers' Compensation Act that defines what a good or poor performer is and we recommend that, for consistency, that be the definition included in this act as well.

Mining contractors: The Ontario Mining Association believes that all legislation in Ontario should be written in a manner than lends itself to fair and consistent application. The present draft of Bill 208 does not appear to do this in its treatment of all Ontario contractors.

Subsection 8(1) gives the construction industry and constructors certain exemptions, but fails to include those contractors and constructors who work in the mining industry. Since contractors and constructors in the mining sector face many of the same situations as those not in mining, it would seem only fair that the minister amend subsection 8(1) to include mining contractors and constructors when there exist similar conditions to those in the construction industry for which there is an exemption.

Recommendation 18: Subsection 8(1) should be amended by adding:

"(c) to an employer, contractor or subcontractor working in the mining sector employing fewer than 50 workers on a project for less than six months."

Advisory Council on Occupational Health and Occupational Safety: We believe that this group has performed a very vital function. We are

afraid that it will be either swallowed up or not given the weight or attention it should have.

Recommendation 19: We therefore recommend that section 6 of Bill 208 be amended to delete that statement calling for the Advisory Council on Occupational Health and Occupational Safety to be abolished. We further recommend that the ACOHOS be retained as the technical advisory council to the Minister of Labour and the Workplace Health and Safety Agency.

Medical surveillance: This is also a very important point for us in the mining industry. Bill 208 proposes to repeal clause 17(1)(e) of the act, which requires an employee, at the expense of his employer, to have "such medical examinations, tests or X-rays, at such time or times and at such place or places as prescribed."

Removal of this section could mean that all underground miners could be exposed to potential hazards. For example, the current mining regulations require crane and hoist operators to undergo annual medical examinations. Our industry views this requirement as important for the protection of our workers. In cases such as this, we cannot accept voluntary participation and maintain our commitment to safety in our workplaces. Such a situation would unjustly put workers at risk and be inconsistent with the objective of promoting a safer workplace environment.

Our very strong recommendation is 20: We recommend that section 11, deleting clause 17(1)(e), be deleted from Bill 208.

In conclusion—the happiest words, I think, in the English language—we believe that Bill 208, as read in the House on 12 October 1989 by the Minister of Labour with proposed amendments, is an improvement on that read 24 January 1989.

However, we believe it continues to lack consistency with our understanding of the realities of the workplaces of Ontario and the internal responsibility system. We believe Bill 208 needs to be directed more towards the education and training of all workers and the fostering of a co-operative workplace environment. We do not believe the current draft fulfils that need.

We have attempted to be constructive by offering alternative language and some ideas which we feel will bring Bill 208 closer to the concept of the internal responsibility system found in the Ham report. The experience of our industry clearly indicates that Bill 208 needs further amendments if it is to accomplish the objectives the minister stated. Without changes,

Bill 208 will create unnecessary conflict between the workplace parties and thereby cause the advancement of worker safety to be severely set back.

Thank you, and we are available and open for questions.

The Chair: We have only about five minutes left, but I cannot resist jumping into this myself and asking you a question about your statement on page 31. You are talking about section 8(1), which is really section 4 of Bill 208.

The last time I checked, the mining contractors out there sinking new shafts and so forth—I think that is whom you are referring to in your comments here—

Mr Reid: That is part of it. Yes, that is one of the things they do.

The Chair: Right.

—had the highest assessment rates in the province because of their high accident rate and the danger of the work. I am wondering if you really think it is fair to expect the bill to exempt them from the bill when there is such a problem and they represent such a problem in health and safety.

Mr Reid: The bill does make provisions for poor employers, whoever they are, but I will let Mr Campbell respond.

The Chair: Not if they were exempt from the bill, it would not.

Mr Campbell: I think their accident rate has dropped very, very substantially in the last two or three years and I do not think their assessment rate has caught up with the reduction in accidents.

Mr Reid: I believe Mr Blogg has some further information.

Mr Blogg: The mining contractors received a 10 per cent reduction in rate in the 1990 rates. They were to receive a higher reduction, but the board's rules did not allow that. In fact, the board actuary and the board people commended the mining contractors for the improvement they have shown over the last few years. They are within a very small percentage of their target rate set by the compensation board.

The Chair: Mr Wildman and Mr Dietsch. We really are almost out of time.

Mr Wildman: There is sort of a sense of déjà vu.

Mr Ballinger: You used to be on the public accounts committee as well, did you?

Mr Wildman: I am looking at appendix ii, which shows a commendable decrease in lost-time injuries in the mining industry.

I would preface this by saying that I was a member of the committee that produced what, for the first time, I have heard referred to as the Laughren report—

The Chair: I am glad you said that.

Mr Reid: We were going to call it the Floyd Laughren report, but we thought we might be polishing the apple.

Mr Wildman: I want to look at this. Note that the decline which begins in late 1975 was about the time the Ham royal commission came about. Perhaps you could confirm that the Ham royal commission was established by the government of Ontario as a result of what, for want of a better term, might be referred to as a wildcat strike in Elliot Lake on health and safety issues.

Mr Reid: I think that is basically true.

Mr Campbell: That is true.

Mr Wildman: Then in 1980 you see another significant decline. In terms of Elliot Lake, could you confirm that that was about the same time when in Elliot Lake, and for that matter in Inco in Sudbury, they negotiated in their collective agreements worker representatives with the right to shut down unsafe work?

Mr Rickaby: Certainly I recollect, because I have sat on the negotiating committee that formed the thing, certainly at Denison's operation at Elliot Lake in the 1980s—I would, I think, differ with you in your statement that they have the ability to stop work.

Mr Wildman: Oh. I do not want to take a lot of time, but maybe Mr Rickaby could elaborate on that.

1650

Mr Rickaby: Well, I guess it depends on, again, your definition of what is "stop work." The key thing with the worker-inspectors, as we call them in our agreement, was that they would receive specific training. In particular in our environment it was one in ventilation, and of course the common core and this type of thing in the mine. To the extent that their training allowed them to identify an unsafe work condition or practice, they, along with everybody else in our operation, have the right to stop that and the duty to stop that action carrying on or that work carrying on. So the intent of setting up or establishing a worker-inspector was not to have an individual who could go and unilaterally shut down a workplace or give him special powers. The intent was to ensure that workers had representatives who were trained both to their standards and the company's standards to look at

and establish a good, safe working environment within the operation. I am not trying to—

Mr Wildman: I understand what you are saying, but in essence they do have, as everyone else has, the right to stop work if—

Mr Rickaby: In areas where they are specific to their expertise, yes, certainly.

The Chair: We are going to move on because we are out of time. Mr Dietsch.

Mr Dietsch: Just to further Mr Wildman's discussion, is it a unilateral right to stop work? Is it the unilateral right to stop work that they have or did they have to do it in consultation with the supervisor or how did they do it?

Mr Rickaby: The way it is done at our particular operation is, if they find a situation like a piece of machinery which has, say, faulty brakes or something like this, they would tag it out and our approach is that they or the worker involved would immediately contact the supervisor to address the problem and ensure that there was—

Interjection.

Mr Dietsch: So they stop, and then the next immediate step is to contact the supervisor.

Mr Rickaby: To repair the situation or, if there is a disagreement, to contact the supervisor.

Mr Dietsch: That holds true in all cases?

Mr Rickaby: Yes, it holds true basically for every employee on our property.

Mr Dietsch: So they are practising the individual right to stop.

Mr Rickaby: Yes, sir.

Mr Dietsch: In the wording that you give us by way of suggestion on page 20, is that the wording that is in your collective agreements?

Mr Reid: Well, you have to appreciate, as I am sure you do, that we have 40 companies, for instance, in the Ontario Mining Association and they all have separate collective agreements and they all vary.

Mr Mackenzie: They do not necessarily all have full-time inspectors.

Mr Reid: I think it is safe to say this is a collective—

The Chair: Some are even contractors.

Mr Reid: That is right.

Mr Dietsch: I guess I am trying to analyse where this wording came from.

Mr Reid: This is a consolidation of how it operates in most of the mines in Ontario. I mean, we could not give you an example—every mine is

slightly different. But in the survey and the study we did, this is pretty well the way it operates.

Mr Dietsch: Okay.

Mr Reid: The important thing is that it is joint, that labour and management are involved in the decision and that if there is something immediate you are supposed to stop, as an individual you are supposed to stop, and you report to the supervisor. Our problem with the act is the wording on the unilateral business and everybody now has the unilateral right to stop work as an individual.

The act is just going one step further and we are trying to clarify how that process should work.

The Chair: Mr Reid, Mr Blogg, Mr Rickaby, Mr Campbell, thank you once again for coming before the committee. That is it.

Mr Reid: It is over.

The Chair: Thank you very much. I hope you get home safe and sound tonight.

INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL AND
ORNAMENTAL IRON WORKERS,
LOCAL 721

The Chair: The next presentation, and the last one of the day, is from the International Association of Bridge, Structural and Ornamental Iron Workers, Local 721, and I recognize John Donaldson. Mr Donaldson, we welcome you to the committee. If you will introduce whoever is going to be with you we can proceed. I think you know the rules, that the next 30 minutes are yours.

Mr Donaldson: As you said, my name is John Donaldson, president of Iron Workers Local 721. To my left I have Bob McCarthy. Bob is not an officer of the local. Bob has the distinction, I guess you could call it that, of being the first co-chairman of the first committee ever imposed by the Minister of Labour. Of course that was the committee at the Scotia Plaza. Of course that was imposed after we had the disaster of two men killed and three men crippled for the rest of their lives. To my right I have Peter Kutyma. Peter also, I should say, is not an officer of the local union, but was a member of another committee that was imposed by the Minister of Labour at the SkyDome project.

What I would like to do is just read our brief through without comment, because I would like to give my two colleagues the opportunity to tell you how those committees work or do not work. These are two men who are on the tools, as we say.

I will start on page 2. Page 1 just tells you what the iron worker does for a living.

Previous briefs presented to this committee from construction firms and company associations have, in our opinion, not given this committee a true picture of the reality in regard to health and safety in the construction industry, therefore we have two rank-and-file iron workers here at the table to assist the committee in finding out the true situation about conditions at job sites.

Our first reaction, when Bill 208 was read in the House for the first time, was with few reservations. It was considered by us a progressive piece of legislation, particularly for our industry, for among other things it gave us joint committees for the first time and it also recognized the uniqueness of the construction sites by including trade committees. We were also pleased by the inclusion of certified worker representatives on the committees, and also, most important, the authority of the certified representatives to close down the job or part of the job where the threat to an employee was imminent. We feel that Bill 208 as proposed would go a long way to make Ontario a leader in health and safety legislation in this country.

Now let us address the proposed amendments to Bill 208.

Joint health and safety committees on construction: There was, in our opinion, no reason whatsoever why construction was not included in the present Occupational Health and Safety Act.

Trade committees: In our opinion, from experience, joint committees will not work without trade committees. Each trade on a job site is completely autonomous. There is no vehicle for trades to get together, unlike industrial establishments where workers are under one roof and producing a common product. Each trade on a construction site works at its particular craft jurisdiction and is the expert in its own craft in regard to health and safety. Therefore, each trades member of the trades committee would have his input into the joint committee through the trades committee.

Certified representatives: The certified representatives on the committee must have the authority to shut down the job or part of the job as outlined in Bill 208. Without this authority the joint committee will not work, it will only be an advisory committee.

The present Minister of Labour has proposed some amendments to Bill 208 and he outlined his reasons for these changes before this committee on 11 December 1989. The minister said, "Bill 208 takes a time-tested, well-established system

and improves it. It will work because it emphasizes prevention; it emphasizes teamwork; and it emphasizes partnership."

1700

With all due respect to the minister, a time-tested, well-established system in the construction industry means the status quo. Workers who complain about health and safety conditions are called troublemakers and are laid off at the first opportunity. Employer-initiated health and safety programs are nonexistent, and we challenge any construction company or association to show figures on how many man-hours of training have been completed in any one year. The health and safety conditions on Ontario construction sites are deplorable, and these conditions are in fact well established. We fully understand that these are strong allegations and we ask the committee to take them seriously. We ask the committee to pick any job site at random in the city of Toronto and make a tour of that site. We know that you will be appalled at the conditions.

The workplace hazardous materials information system legislation is a good example to prove our point and shows that teamwork and partnership will be difficult to accomplish. The Council of Ontario Construction Associations, the lobby group for employers, lobbied to have WHMIS exempt from construction. The provincial labour-management health and safety committee agreed on a minimum of five and a maximum of eight hours of generic training on WHMIS for construction workers. Some of the largest and best-known contractors in this province ignored this agreement and gave their employees one or two hours of training, not in a proper classroom setting, but in cramped workers' shacks on job sites. The committee is aware of the emphasis on personal hygiene regarding WHMIS. Is the committee aware that in this world-class city in 1990 there is not one job site where a worker can wash his hands? The employers' answer to washroom facilities is a Johnny-on-the-spot.

We were pleased by the minister's emphasis on training, and we quote, "The training system is the backbone of a preventive health and safety system." We could not agree more. Then the minister proposes that the bill be amended so that instead of a certified rep being required where there are 20 or more workers and the job will last three months, he suggests 50 or more workers and the job will last six months. This in itself exempts 80 per cent of the job sites and of course cuts down drastically on the training for certified representatives in our industry. His reason for the

change is, "This would be a difficult thing to accomplish on many small construction sites where worker turnover is high and people are always on the move."

This is what we heard in 1978 when we were excluded from having committees. We submit that this situation does not cause a problem. There is no reason why job sites with 20 workers or more cannot have a certified rep. If the minister is, as he says, so committed to the training aspect of the bill, we suggest a large pool of certified reps, and when a certified rep is assigned to the job site, he that remain there until the completion of the job or until there are less than 20 workers.

The minister has proposed that there may be other approaches to the issue of the certified reps' authority to stop work. This issue ties in directly with the effectiveness of the joint committee. The minister in his address to this committee uses terms like "joint responsibility," "equal say." For a joint committee to work, for the internal responsibility system to function properly, both sides of the joint committee must not only share the responsibility but share authority.

From our experience of the few committees we have had, the employers have all the authority to rectify unsafe conditions. The workers on the committee can only identify the problems, with no authority to rectify them. If the certified rep had the authority to shut down, that in itself would make the committee work better. We predict that this authority would seldom be used, but if it is known by the employers that it could be, it would be enough to get problems resolved.

The responsibility without the authority is something we reject. Therefore, we suggest that this committee not amend the right to shut down, and if the committee does amend this part of Bill 208, we ask that you also amend the bill to remove joint committees from construction. We do not wish to be a rubber stamp for a committee. Every committee so far has raised problems. These problems continue to be raised month after month, meeting after meeting, without any resolution until the job has been completed. We do not want any part of committees that are impotent.

Although the minister has endorsed the trades committee concept, and we have explained previously why trades committees are necessary, we know that the employers, through their lobby group (the Council of Ontario Construction Associations), are opposed to trades committees. Their idea is to keep workers apart, not to allow them, as individual trades, to bring their con-

cerns in their particular craft to the workers on the joint committee. We draw the committee's attention to an article attached entitled *The COCA Perspective*. They say, "Where there have been trade committees, they have poisoned the co-operative atmosphere." We would like them to explain this statement and to be more specific as to where and how they arrived at this conclusion.

They also speak in this article about safety-conscious employers working in partnership with labour and safety associations, when in fact labour has put the employers on notice that they are about to dissociate themselves from the provincial labour-management health and safety committee and the Construction Safety Association of Ontario. They also claim in the article that voluntary health and safety committees have worked well, when in fact the Provincial Building and Construction Trades Council of Ontario has boycotted all health and safety committees. Things are not as rosy as COCA would like to have you believe.

In conclusion, the minister has said that Bill 208 will make a difference, that the people who work on the inside, who are on the work site, have the insight to recognize job hazards and the innate understanding of how the workplace functions to prevent job hazards. We applaud him for the above statement, and if this committee recommends Bill 208 be passed as is, they will prevent injuries and fatalities that would otherwise occur.

But if the committee brings in the suggested amendments, it will be the same old thing; the spouses and families of our members will still wonder whether their husbands or wives will return home safely when they leave in the morning to work on a construction site.

At this point, I will ask Mr McCarthy to just give you his experiences on that job site at the Scotia Plaza.

Mr McCarthy: Mr Donaldson has previously stated that I sat on the first joint health and safety committee for construction workers of this province. In fact, I was the co-chairperson of the joint committee, chairman of the workers' trades committee, as well as union steward and health and safety representative for the ironworkers who work for Northern Steel Ltd.

As you are aware, the joint health and safety committee was an order by the Ministry of Labour as a result of the man-hoist accident at the Scotia Plaza in which two workers were killed and three more were injured for life. One of the injured workers was a crane operator whom I had

worked very closely with and who is now a paraplegic.

With the help of the Toronto-Central Ontario Building and Construction Trades Council and the Ministry of Labour, the terms of reference for the structure of the joint health and safety committee were put in place. Workers were selected to participate at each level of the structure, starting as health and safety reps for their specific trade, and in turn we would meet as the workers' trades committee representing the approximately 14 trades on site.

From that committee, five workers were selected to meet with management at the joint health and safety committee level. This system, with all the ingredients in place, enabled the flow of information with regard to hazards and concerns of the workers to reach the joint level, where decisions and hopefully results would take place. I now understand this system as the internal responsibility system.

For the first several weeks, perhaps as long as three months, this system seemed to function as designed. A sense of teamwork and purpose certainly prevailed at the workers' trades committee level with the tragic accident still fresh in all our minds. The men we worked with made constant inquiries with regard to specific issues still unresolved.

At the joint health and safety committee level, a sense of co-operation did exist. Management seemed legitimately concerned and the worker reps understood that matters could not be resolved overnight. But as publicity of the Scotia Plaza tragedy subsided, so did management's enthusiasm for the joint health and safety committee.

1710

The first sign of its diminished support for the committee was management's arbitrary decision to schedule the joint meetings every second week instead of weekly as was originally agreed. From this point, matters only seemed to get worse for the worker members of the joint committee. We became frustrated with our role as reporters of hazards and concerns and our inability to get much, if anything, resolved due to management stalling tactics.

We seemed to have the responsibility for safety but no authority, so our final recourse was to call the Ministry of Labour inspectors when issues mounted. Only with compliance orders within time frames did management finally react. It is clear to me, in order for the joint health and safety committee to function properly within the internal responsibility system, construction

workers must have the authority to ensure compliance with the act and its regulations. We must also have the chance to meet among ourselves, to organize and prioritize our health and safety grievances without intimidation from management.

I believe the original Bill 208 meets these needs by enabling a certified worker rep the power to shut down unsafe work and the inclusion of the workers' trades committee.

I thank you for the opportunity to state these views and hope I can answer your questions.

Mr Kutyma: I am Pete Kutyma. I have been an ironworker for 14 years. I worked at the SkyDome from September 1988 until it opened. I was on the trades committee from September 1988 until January 1989. Right away, I became disillusioned with the process because, meeting after meeting, the same problems kept popping up. It seemed nothing was getting resolved, and things kept getting worse from a safety standpoint.

The minutes from the trades committee kept getting longer and longer. It became apparent that the joint health and safety committee had no authority to get any of its concerns implemented on the job. It seemed we were beating our heads against a wall because management did not take any of the job site hazards seriously and more or less waited for them to go away as the job progressed.

The trades committee had many long discussions about how to solve that problem, but nothing was done for several months. The washroom facilities on the job sites were atrocious. The Johnny-on-the-spots were always a mess because they were never cleaned often enough. It was very disheartening when you had to go to the washroom and it was filled right up to the toilet seat and unusable. Sometimes you had to find two or three of them before you found one that you could use. It got so bad that the workers were actually using the corners of the SkyDome instead of the Johnny-on-the-spots because they were so grotesque. I suggested calling in the newspapers, getting a reporter to check out the washroom facilities and then locking one in there for half an hour just to see what he would write in the newspapers, but the trades committee decided against that.

Another major hazard was the fireproofing used in the hotel called Monokote K-5, which contains 0.1 asbestos. This product is sprayed on the steel beams in the ceiling to fireproof them. It is applied using a wet method which renders it harmless. The mixing area is enclosed, so no one

is exposed to the fibres except the operators, who wear respiratory equipment. It is then pumped to the area where it is applied by a six-inch hose and is sprayed on to the steel beams and ceiling.

As I was saying, the product is applied wet and comes out almost like a mud. The hazard does not start until it is dry and the other trades go in and work in that area. Examples would be electricians doing ceiling lights or conduits, pipefitters doing their piping, sheet metal workers doing duct work and the ironworkers doing revisions to the structural steel because of the many changes made in the hotel.

When these trades worked in the hotel, it was under those conditions. To weld on to a steel beam or fasten something to the ceiling, you had to scrape the Monokote off, and by then it had already dried. As it was scraped off, it fell to the floor and the asbestos fibres rose in the air. The other workers who were walking through the area stepped in it and kicked it as they walked by. The Monokote would then go in the air again. Pretty soon the hotel was exposed to this problem.

It was brought before the trades committee and forwarded to the joint health and safety committee. Again, nothing was done by management to alleviate the hazard. Finally, things came to a head. One morning there was a mass job refusal at the dome. Reporters were everywhere. The men on the job were finally fed up with Ellis-Don and its inaction to on-the-job safety.

As things picked up, a few workers grabbed a Johnny-on-the-spot, took it down to centre field, poured some gasoline on it and burned it. It is a shame that the workers had to resort to this tactic to get some action taken by Ellis-Don on the mess that it created. Here we are, it is 1990; we cannot even have running water and flush toilets on a \$500-million job.

I read something funny on a washroom wall at the Dome that I found rather amusing. It said, "I'm a skilled tradesman, I earn \$60,000 a year and I crap in a plywood box."

After the fire, Ellis-Don's management personnel were very willing to talk. They met with the joint health and safety committee and agreed to put more washrooms on site and clean them more often, and also to clean up the Monokote, among other things. But what they did was more of a hazard than before.

The trades committee members thought they had the Monokote problem cleared up, but due to the fact that, at the time, none of them had any health and safety training, they were unaware of the more dangerous problem that they created with the Monokote. The labourers were now

sweeping up the Monokote, sending the fibres in the air, then shovelling it into a bin and, by doing so, sending a heavier cloud of fibres into the air. Then the bins were taken to a chute which was approximately four storeys high, leading from the hotel right into the dome.

When these bins were emptied down the chute, the Monokote raced down and came crashing to a halt in a big garbage bin, sending a vast cloud of the fibres containing asbestos into the dome. Now the exposure was no longer contained in the hotel; it included everyone in the dome as well. While this cleanup was taking place, the only ones offered protection were the labourers cleaning up. Now almost everyone had been exposed to the asbestos fibres of Monokote. The proper way to clean up the Monokote would have been to use a vacuum cleaner just as soon as it was scraped off.

I told this to the trades committee and it was taken to the joint health and safety committee, but nothing was implemented. The trades committee, as well as the joint health and safety committee, needs to be trained in how to deal with health and safety concerns on the job, as well as having authority to implement those safety issues on the job. Without these two issues, training and authority to clean up the job site, Bill 208 would be useless.

The Chair: We have about 10 minutes.

Mr Fleet: I found the presentation by all three of you very interesting. However, given the time limits, I am going to focus my questions with John and the written presentation. There were, I guess, three areas that I noted in particular. One is that, just by way of comment more than anything else, you included an excerpt from, I guess, a newsletter from COCA.

I just noted that they felt the changes that the minister contemplated and announced in October were totally inadequate and they have effectively damned the bill because they think the bill still goes too far in a way that they do not approve of. It is a matter of perspective. They still do not approve of the status of the bill, at least in that document.

You have also raised the problem, and I would be interested in getting more detail on this, of people being laid off if they raise health and safety concerns. You also indicate that you challenge what amount of training has been provided. I know that the intent of this bill is to try to encourage all employers, and for that matter all employees, to focus on having more training on health and safety matters. Without question, that is one—it is not the only one—of the

key elements of the bill to try to accomplish that. Of course, many different workplaces have very different requirements for the kind of particular training you need. The examples we heard really point that up, that you really need some specialized knowledge in each instance.

What I guess we do not have here with this brief is the level of data that would be perhaps most helpful to the committee. I know that I and others have asked tough questions of management groups that have come in and they have not been able to present any data at all to back up claims. We said, "Look, we need more data."

I am wondering if you could provide us with something more to show that the nature of the problem is that people are being laid off when they raise health and safety concerns. I would invite you to be able to provide any comments now that you can.

1720

Mr Donaldson: I cannot give you any data. I wish you had more time and I would line up a thousand or two construction workers to come before you, because I guarantee you every one of them who ever opened his mouth about health and safety was gone, was laid off. It is a common practice. We all know it.

You talk about COCA. Just look at it. It says: "Some of our larger firms have set up joint health and safety committees on a voluntary basis. The experiences on job sites with joint health and safety committees has been very good. But wherever we've had parallel trade committees, they have poisoned the co-operative atmosphere, destroying the required spirit of joint responsibility." I read that COCA brief and I was shocked. It is a bunch of lies.

If you look at the next page, you will see the resolution that was passed by the provincial building trades.

Mr Fleet: Yes, I did see that.

Mr Donaldson: It says that we are boycotting those committees. You have heard from two people here who were on a mandated and imposed committee by the Ministry of Labour where there was a paper, a structure set out for that committee to work by. They are talking about a volunteer committee. If those committees do not work, how in hell does a volunteer committee work?

Mr Fleet: One of the provisions under the bill is that when a joint health and safety committee makes recommendations, the employer has to respond and there is a time limit set out. There is some suggestion that the time limit, which is 30

days, ought to be reduced. That is something the committee is going to be considering when it goes through clause-by-clause next week.

I guess one of the problems that we have, and I do not know what the real solution is, quite honestly—

The Chair: We are really out of time, so if you could make this a brief question.

Mr Fleet: One of the problems that we have is because workplaces are so individualistic in terms of the problems that may arise, it is difficult to just give an ironclad rule about how it is all going to function. That is why we are trying to foster something other than the kind of language that is in the document you have quoted from COCA, something where there is a discussion and an understanding that there is a joint benefit as well as a joint responsibility in what is taking place. So we are struggling to try to provide that in a wide variety of different circumstances across the province.

Mr Donaldson: When you get responses that Mr McCarthy got, if we want to get into other cases, when he sat on that plaza committee—and I sat on there as an observer on many occasions. They take them on because something was not done that should have been done, and the answer is: "But you are only advisory. We don't think that needs to be done. You brought it to us and we don't think it should be done, so that's it." That is the kind of response we were getting from the management in the Scotia Plaza.

Mr Fleet: I have other questions, but other members—

The Chair: I understand. Mr Mackenzie.

Mr Mackenzie: Two quick questions for you, Mr Donaldson. I thought the workers with you did outline very clearly why the system is not working now. Is it not fact that for a long while in this province the only two really mandatory health and safety committees we had were at the Scotia Plaza and the SkyDome?

Mr Donaldson: I think altogether, in the last 10 years since Bill 78 came in, there have been four or five.

Mr Mackenzie: And in both the most recent cases, it really was accidents or serious problems that resulted in those committees being established.

Mr Donaldson: That is the only reason you can get a committee.

Mr Mackenzie: And as you have clearly pointed out here, the internal responsibility

system, as currently organized, simply does not work.

Mr Donaldson: I do not think any of us would think the internal responsibility—who does the employer speak to? Basically internal responsibility is for the two sides to get together and try to work out the problems between them. Who does the management get together with if you do not have a committee?

Mr Mackenzie: It is a particular problem with the building trades. The other question I had: The bill as it originally came in is one that, as you yourself said, your organization—there are some people who have reservations about this particular bill. Certainly in the area of pay, in the area of public sector workers and a number of other things, there are changes that are needed, even with the basic, minimum bill. But the minimum bill is one that labour was prepared to buy prior to the minister coming out with his so-called amendments.

From a building trades perspective, do you see the amendments, the changes that the new, gelded minister brought in as ones that really were a betrayal of the labour movement?

Mr Donaldson: I think anybody on this committee, and I talk about all three parties, who thinks it was not a betrayal is kidding himself. Of course it was a betrayal, particularly for the construction workers. I am not an expert in procedure in politics, but when I see a government bringing in a bill that we think is a step forward, somewhat progressive, and that same government that brought the bill in starts to drastically amend its own bill—I do not know if I have ever seen that happen before.

Mr Ballinger: It happens every day.

Mr Donaldson: Drastically amend it, water it down?

Mr Mackenzie: Not after they have told a group to go out and sell it, Mr Ballinger. You should know what is going on in this committee on this particular issue.

Mr Donaldson: I think it is a betrayal of the government and I think the Liberals on this committee should be embarrassed. That health and safety act is to protect the workers. That is what I thought. It seems to me, if you are going to bring those amendments in, it is to protect the employers against the workers. That is how strongly I feel about it.

Mr Mackenzie: Would it have been a little more honest had the previous minister simply not met with labour people and asked them to sell this bill to their members?

Mr Fleet: On a point of order, Mr Chairman: I am not so sure that the language is appropriate, talking about something being more honest and suggesting something is not honest.

Mr Mackenzie: I do not think there is anything wrong with that. I never charged anybody with dishonesty.

The Chair: To be fair to Mr Fleet, you did ask if you thought it would be more honest. This will be Mr Mackenzie's final question. Do you have a short question, Mrs Marland?

Mr Mackenzie: "More honest" is what I said. It would have been a little more straightforward with workers if they had not been asked to sell this bill and then get the legs cut out from under them with the amendments that were suggested.

Mrs Marland: I guess there is the term "honest" and there is the term "more honest." It does not mean "dishonest."

What I would like to know is, when you had the massive walkout—you mentioned 14 or 16 or more workers.

Mr Kutyma: Many more.

Mrs Marland: The work refusal.

Mr Kutyma: It was almost the whole job site, hundreds.

Mrs Marland: Hundreds. Did anything change with Ellis-Don as a result of the demonstration?

Mr Kutyma: It changed for approximately three months. They brought in more washrooms, they cleaned them more often, but as the job progressed, they went back and it just kept building up and building up again. When the heat was on, things changed for about three to four months, then it went right back to the way it was before.

Mrs Marland: With that many people exercising their right to refuse to work, were any of those people penalized in terms of their wages or continuing to work there?

Mr Kutyma: I do not think anybody lost his job. The ironworkers on that job, I believe, all got paid. The other trades did not get paid.

Mrs Marland: So there was some penalty then?

Mr Kutyma: To the other trades.

Mrs Marland: And has that been followed up since that you know of?

Mr Kutyma: No, my understanding was, if they were to take that to the labour board, because of its being a mass refusal there may

have been problems with it, so they did not pursue it.

Mrs Marland: Thank you.

Mr Donaldson: Can I just follow up quickly? There are a few job refusals that go on in the construction industry, and let me just tell you one that happened over three years ago, when 100 ironworkers walked off the Hydro site at Darlington. It was 10 days they were off before all of what they were asking for was implemented. They were hanging off walls with hooks around their bellies, where they should have been using scaffold as per the act.

It was an absolute violation of the act, and those guys were out for 10 days before they finally got scaffolding. They did not get paid for those 10 days. That case was completed two and a half years ago at the labour board, when we had to take the company to the labour board, and we are still waiting on a decision from two and a half years ago.

This committee is hearing a lot of stuff, and you might think we are exaggerating, but we are not exaggerating at all. It is worse than what we are telling you. That is why I ask you seriously when I ask you in this brief to meet some day in the next couple of weeks and go on any job site you choose. Do not tell anybody you are going on it. Go on a job site and you will see that we are telling the truth, and it is worse than what we are telling you.

I get pretty mad when I read COCA telling you everything is fine. It is absolutely ridiculous what is going on in construction. We are jealous of those people who are here from the public service, and the auto workers and steelworkers, and you heard what they have to say about it. We wish we had what they have. It is absolutely terrible out there. Please go on a job site and have a look at it.

Mrs Marland: Can I just ask a fast question? There is a job site at the corner of Peter Street and it is one or two north of Front Street.

Mr Donaldson: The CBC centre.

Mrs Marland: Yes, I guess it is.

Mr Donaldson: It is the largest job site in the province of Ontario right now, and I wish that would be the job you would go on.

Mrs Marland: It is funny that you say that because—

The Chair: We really have to call this to a halt, Mrs Marland. There are complaints from other members of the committee. We have agreed there are 30 minutes for each presentation. If we go over on one, then we get

complaints from others asking, "How come they are more important?"

Mr Donaldson: Because we are the last tonight.

The Chair: Yes, that is right.

Mr Ballinger: You can see how tolerant we are.

Mrs Marland: It is all right. I will ask them myself.

The Chair: That is right, because the members of the committee will not put up with one group getting a longer time than another.

Mr Donaldson: Can I challenge the chair on that?

The Chair: Absolutely, anybody can.

Mr Donaldson, I wish we had more time to discuss this matter with you but we simply do not. I thank you and your colleagues for your presentation.

Mr Donaldson: I want to thank the committee members.

Mr Mackenzie: You know, John, you should have listened. The Liberal back there is one of the reporters who could do that half-hour bit on the Johnny-on-the-spot.

Mr Wildman: Mr Chairman, I have a question for you. I would like to ask if indeed it could be arranged for this committee to meet at a construction job site in Toronto?

The Chair: The committee sets its own agenda. The committee could meet as a subcommittee and try to work out something like that if it so wished.

Mr Mackenzie: That has to be done unanimously. That has to be understood, Mr Chairman, or it is useless.

Mr Ballinger: The moment you discuss it in here it would be more a story.

The Chair: The subcommittee would have to meet and do that.

Mr Donaldson: If you announce it, Bob, you are going to have the cleanest job site in this city.

Mr Wildman: That is the whole point.

Mr Mackenzie: That is what I mean.

Mr Ballinger: We are agreeing with Bob.

Mr Wildman: I would suggest that the subcommittee meet to discuss that.

The Chair: When?

Mrs Marland: Now.

Mr Wildman: Tomorrow or now, if you want.

The Chair: I do not know about others. I cannot meet now.

Mr Wildman: All right then. How about tomorrow at noon?

The Chair: How about tomorrow when we finish hearing the presentations? Just a plea to members of the committee before you go. Today was the first day when it became very difficult to keep to the 30 minutes. If the committee does not want to keep to 30 minutes, that is fine by me, but if you want to keep to the 30 minutes, you have to respect that. It is becoming extremely difficult, and I end up being rude to witnesses as opposed to being rude to members of the committee.

I really think we should stick to the 30 minutes because it is ridiculous that we do not, but it is becoming—today was the worst day in trying to get members to recognize that. It will mean that sometimes somebody is going to get angry and ask, "How come I did not get on?" but I think that if—

Mr Ballinger: On a point of order, Mr Chairman: I just make this observation as a member this afternoon. Before you attack any member of the committee—

The Chair: I am not.

Mr Ballinger: —let me suggest to you, as an observer sitting here today, that you made it quite clear to all of the presenters what the rules of game were and almost all of them used up their entire time for the proposal.

The Chair: Not quite.

Mr Ballinger: So that does not give the members of the committee an opportunity to ask specific questions they may want to.

The Chair: I agree.

Mr Ballinger: I suggest that what you might want to do is remind the presenters that they should leave some time in their presentation.

The Chair: It is up to them, though, Bill. That is not up to me; it is up to them. We do not tell them how to use their 30 minutes, I do not think.

Mr Ballinger: Then they should not expect questions.

Mr Carrothers: Mr Chairman, you certainly have my support if you want to cut members off. Cut me off, if you want. You always do anyway.

The Chair: Okay. It will mean that there will be some angst from time to time, but I think we must.

Mrs Marland: Are we sitting all day tomorrow still?

The Chair: Yes, we are sitting tomorrow until 4:30.

Mrs Marland: I want to just say something. I cannot meet tomorrow at lunchtime as a subcommittee, and I think what we are going to discuss as a subcommittee is important. It would probably take us 10 minutes, so why can we not do it right now?

Mr Dietsch: I cannot. I am already late for a meeting. We were supposed to be out of here by five o'clock.

The Chair: You cannot meet at lunch?

Mr Dietsch: Unfortunately, I cannot stay tonight.

The Chair: Are you here in the morning?

Mrs Marland: Yes.

Mr Dietsch: Yes.

The Chair: How about 9:45?

Mrs Marland: That is fine.

Mr Dietsch: Fine.

The Chair: At 9:45 in my office. The committee is adjourned.

The committee adjourned at 1735.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair: Laughren, Floyd (Nickel Belt NDP)

Vice-Chair: Mackenzie, Bob (Hamilton East NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Fleet, David (High Park-Swansea L)

Harris, Michael D. (Nipissing PC)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miller, Gordon I. (Norfolk L)

Riddell, Jack (Huron L)

Wildman, Bud (Algoma NDP)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr Riddell

Carrothers, Douglas A. (Oakville South L) for Mr McGuigan

Epp, Herbert A. (Waterloo North L) for Mr McGuigan

Kozyra, Taras B. (Port Arthur L) for Mr Miller

Tatham, Charlie (Oxford L) for Mr Riddell

Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mr Harris

Clerk: Mellor, Lynn

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Amalgamated Transit Union, Local 113:

Jones, Richard, Assistant Business Agent, Transportation

Wehr, Dieter, Representative, Health and Safety Committee

From the Confederation of Canadian Unions:

Lang, John B., Secretary-Treasurer

From the Toronto Home Builders' Association:

Silverberg, Harry F., Second Vice-President

Dupuis, Stephen E., Government Relations Manager

From the Grocery Products Manufacturers of Canada:

Rowan, Kathryn C., Director, Provincial Affairs

McGregor, Dave, Director of Personnel, Wrigley Canada Inc

Barkla, Peter, Vice-President, Human Resources, Campbell Soup Co

From the Labour Council of Metropolitan Toronto and York Region:

Howes, Bill, Executive Assistant

Kuzyk, Moe, National Health and Safety Co-ordinator, Canadian Auto Workers

From the Board of Trade of Metropolitan Toronto:

Crisp, David, Chairman

Noonan, James, Labour Relations Subcommittee on Occupational Health and Safety

From the Ontario Forest Industries Association:

Bird, Ian, President

Valley, John, Vice-President, Boise Cascade Canada Ltd

From the Ontario Public Service Employees Union:

Clancy, James, President

DeMatteo, Bob, Health and Safety Co-ordinator

From the Ontario Mining Association:

Rickaby, Andy, Chairman

Reid, Patrick, President

Campbell, Bruce, Manager, Technical Services

Blogg, John, Manager, Industrial Relations

From the International Association of Bridge, Structural and Ornamental Iron Workers,**Local 721:**

Donaldson, John, President

McCarthy, Robert

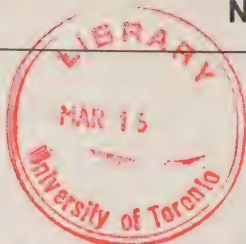
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Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Resources Development

Occupational Health and Safety Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Friday 16 February 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Friday 16 February 1990

The committee met at 1010 in committee room 1.

OCCUPATIONAL HEALTH AND SAFETY STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Chair: The standing committee on resources development will come to order. We are expecting more members, but I do not think we should have Mr Biggin wait any longer. He gets very testy.

UNION OF INJURED WORKERS OF ONTARIO

The Chair: Mr Biggin, we welcome you to the committee this morning. We look forward to your presentation. I think you know the rules. We have allowed 30 minutes for each presenter. You can use that 30 minutes yourself or you can allow for some time for an exchange with members of the committee. So we welcome you to the committee this morning.

Mr Biggin: Thank you very much. I want to begin by saying that I have to extend the apologies of Joe Zenga, who is our president. He could not be here today. I will just give the presentation and then we can have some questions, if you so desire.

The Union of Injured Workers of Ontario welcomes the opportunity to appear before the standing committee on resources development to comment on Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act. It is extremely important that all the stakeholders have a forum to express their concerns about proposed legislative changes. An open and upfront process will help to ensure that the final product extends the rights of a majority of Ontario's citizens.

Our organization has appeared before your committee on numerous occasions over the past decade. Many of our members have spoken to you directly about the pain, insecurity and disruption of family life they suffer as a result of injury on the job. Countless lives are destroyed because of the carnage in the workplace. Over the years, more and more people have been

injured on the job. In fact, Canada is recognized as one of the most dangerous countries of the western industrialized nations in which to work. Thousands of workers are faced with unsafe working conditions each day and this contributes to an extremely high accident rate. Corporations are in fact getting away with murder in many cases.

On 19 May 1974, the Union of Injured Workers adopted as part of its four-point program a call for improved safety legislation which would include stiff penalties for employers who violate the safety laws. Over the years since 1974 we have directly experienced through our organization and through the work we do representing injured workers before the Workers' Compensation Board and other levels of government the effects of unsafe working environments.

In October 1979, the Occupational Health and Safety Act (Bill 70) went into effect. This legislation, although a step in the right direction, was never properly enforced. As criticism mounted, the Labour ministry seemed to become mired or paralysed and incapable of doing very much. Inaction was the order of the day.

Then on 24 January 1989, then Labour minister Greg Sorbara introduced Bill 208. Much of the thrust of this proposed legislative change was positive from our point of view. It provided a mechanism whereby workers could participate in health and safety in all workplaces, including retail operations, libraries, offices and construction sites; all workplaces with 20 or more workers will have a joint committee; joint committees will have labour and management co-chairpersons rather than management-appointed chairpersons; worker members will have at least one hour's preparation time for each meeting; smaller workplaces of between five and 19 employees will have a worker health and safety representative; every workplace of 20 or more employees will have a certified worker member of the joint committee and a certified management member; all joint committee members will be trained, and certified members will have in-depth training; a bipartite labour-management agency will be established to set the standards for certified training and will determine how funds in occupational health and safety

will be spent; individual workers will be able to refuse work activities that are unsafe; certified worker members will have the right to stop dangerous work; finally, fines will be increased from \$25,000 to \$500,000 or one year in jail.

These are all part of the legislation as it was presented by Mr Sorbara that we endorse and we support.

The Union of Injured Workers considers the intent of Bill 208 to be a step in the right direction. No piece of legislation, of course, is going to be perfect or satisfy all parties. However, it is regrettable that employers in Ontario, putting profits before people, decided to strong arm the government in order to water down the proposed legislation.

The Union of Injured Workers will address the following areas.

1. We strongly—and I have to urge this since we have been party to the green paper process and the process set up by Minister of Labour Gerry Phillips around the regulations formulation for the Workers' Compensation Board—support the concept of bipartism. We strongly oppose the suggestion put forward by the minister that there should be a so-called neutral chairperson. We agree with the Ontario Federation of Labour that this neutral chair would in most, if not all, instances represent the interests of government, which is a major employer in its own right. It should also be noted that in our opinion bipartism will operate through the existing organizations representing workers, ie the Ontario Federation of Labour if we are talking about organized workers, and not ad hoc groups or individuals who act on their own behalf or at the whim of some group in government.

I think this is a very important point to remember because, in fact, a lot of the smaller employers are suggesting that what we have in effect would be picking people out of society to represent, supposedly, workers or employers or whatever, and I do not think this kind of thing is going to work because what we have with the Ontario Federation of Labour is a credible organization which represents a large number of organized workers in Ontario. It has the resources to be able to support the bipartite structure, and this is the road we should go.

Certainly if we look at Europe, which is the only other place I guess that we can look in the world for models about bipartism, we will see that the labour organizations are clearly organized by the government and we do not play these silly games of saying: "Okay, well, this group arises over here. Oh, look we've got another

group over there that's just developed. Why don't we give them recognition as well?"

The Ontario Federation of Labour has been recognized as the leading force of workers for quite a number of years and this is the body that we think should be clearly in the leadership, along with whoever the employers choose. The other part of bipartism is that for the employers, we are not trying to tell the employers who they have on a bipartite committee, and we do not think government should be telling them who should be there either. On the other hand, we do not want employers or government telling us whom we should be appointing to those bodies. Whoever is represented, who is recognized as the organizations representing those stakeholder groups should be the ones to make the choice. Basically you are talking about community control through the existing structures that exist.

2. We strongly support the right to refuse unsafe work. Along with this, we oppose any restrictions which would limit that right.

I think these restrictions probably come up because a lot of employers have the impression that workers are basically irresponsible. It is very easy to support what is happening in Bucharest or what is happening in eastern Europe, but when your own workers do it in this country, then it becomes anarchy and disruption.

By and large, if you look at the work that our organization does and that the Ontario Federation of Labour does, these are very, very knowledgeable, intelligent people who can think strategically and who will put the best interests of the whole forward. I know that might be hard for some of you to believe, but in fact that is exactly what we are talking about. I think that to water down the right to refuse unsafe working conditions is leaving the door open for employers to manipulate and to bargain beyond—you know, the legislation itself has given them that loophole, so for that reason, we support the right to refuse unsafe work without any qualifications. I will elaborate on that if required.

1020

3. We believe that certified members should be provided on construction sites with 20 or more employees. If it is going to be provided for other workers, then it should be provided in the construction industry, which has a very, very high accident rate. Restricting this to construction sites with 50 or more employees will put into jeopardy the health and safety and lives of 70 to 80 per cent of the construction workers in Ontario.

This is, by and large, the largest group that we in fact deal with, and to allow it an out—certified workers are going to be the workers who have special training in health and safety, in the understanding of the act and understanding how to use the act, and I see no reason why this cannot be extended to the construction industry to include all of those sites with 20 or more workers. In fact, if I were not speaking on behalf of the organization, I might say that fewer than that number of employees should have that right, but we will go along with the proposal as it existed originally by Mr Sorbara, and with that qualification, that construction workers be included.

4. This is something that we debated in the green paper committee and it is something that has come up time and time again in discussions with the Workers' Compensation Board, as with workers' compensation. All workers must be covered by the health and safety act, and there should not be exclusions. Farm workers should not be excluded, nor should correctional officers, health care workers, teachers, firefighters or police, and there should not be loopholes to find a reason to exclude them.

We have to understand that if the bargain between labour and management or workers and employers is going to work, it must be based on trust and we must be prepared to have certain risks. I do not think you are going to see police officers going out, because of an unsafe situation, to the hazard of the citizens of Ontario. I think that their organization and the individual members will be responsible enough, but the right must be there and they must be covered by the act.

In conclusion, we have been fighting since 1974 as an organization, not only for injured workers but for all workers in the province of Ontario, to have effective health and safety legislation which would protect the quality of life for workers and all people in Ontario. The government of Ontario has a unique opportunity to produce this legislation. We urge you, the members of the standing committee on resources development, to make this possible.

Mr Fleet: I appreciated your brief and also the persistent and determined activities on the part of your organization on behalf of your members. One of the assertions you have in your brief is that "Canada is recognized as one of the most dangerous countries of the western industrialized nations in which to work." I am quoting from your brief.

Mr Biggin: Yes. That was in the Globe and Mail and it was a United Nations study. It is way back in 1975.

Mr Fleet: The suggestion there is really rather contrary to everything that we have seen about what the rates are, for instance, in Ontario. In Ontario, and I think as best as I can recollect, every single chart that is shown in Ontario and the Canadian rate for accidents in any sector of any industry on a per-man-hour basis has shown a distinctly lower rate of injury in Ontario as opposed to Canada, and the ones that I recall seeing are even lower, in many instances, than other national rankings. So I would really wonder about the statement, whether it is still accurate today.

Having said that, the purpose of the bill is to lower that further. We are not satisfied with the existing level of accidents of all kinds and we are working hard to try to have a better and safer workplace for everybody. It is not that I am trying to say that we are going to rest on our laurels, to whatever extent there may be any, but rather that the assertion that is here is not what we have seen as evidence before the committee. If that was the case, I would be very interested in seeing real, current data about that.

Mr Biggin: Okay, I will just talk briefly on that. What I was trying to get across to you and what we are trying to say is that I can show you statistics for certain American states that make the accident record in Ontario look quite good. However, that is not the issue. We are the wealthiest province in Canada and there is no reason that we should not be providing an environment which provides the maximum safety for all of the citizens in Ontario. I think the record that exists for Ontario, be it better than it is in New Brunswick or in British Columbia, which is basically a resource-industry province and would have a higher accident rate, is unacceptable.

I was doing it for that reason in particular. I am not trying to paint a picture that everything is all bad in Ontario. What I am saying is that the accident rate is still extremely high. After Bill 70 went into effect in 1979, we thought there would be a drop, and there was drop initially, but then things started to go up again. I think this is unacceptable, and that is why we need a strong bill like the bill that was presented by Mr Sorbara and not one which is tampered with and watered down.

Mr Fleet: I suspect that is our question, so I will defer.

Mr Wildman: Thank you for your brief. I note that your organization, in representing injured workers in the provinces, has stated clearly that you support the original Bill 208 introduced by Mr Sorbara.

Mr Biggin: Yes. We are not saying that it is a great piece of legislation but we are saying that it is an acceptable piece of legislation.

Mr Wildman: Right, and obviously it is a compromise between different stakeholders.

Mr Biggin: Yes.

Mr Wildman: Were you consulted subsequently to that by the ministry, prior to the new minister, Mr Phillips, standing in the House in October at second reading of the bill and indicating that the government intended to amend significant sections of the original bill with regard to things like the right to stop work?

Mr Biggin: No, we were not directly involved. I assume that Mr Phillips's office felt that we were probably concentrating on workers' compensation and not perhaps interested in that. We did not go out of our way to elicit that.

Mr Wildman: If these amendments—and we have not seen the amendments yet. We have asked for the amendments to be tabled, but they have not been tabled.

Mr Biggin: That makes it difficult. We just have an impression of it.

Mr Wildman: We will be going to second reading next week and at that time whatever amendments are going to be put will be before the committee. If the amendments are along the lines that Mr Phillips announced in October, what is the position of your organization with regard to Bill 208?

Mr Biggin: I think I have indicated here those areas that we highlighted. If what we understand Mr Phillips's desires are now, after a lot of consultations with employers, we understand, but he has also talked with the Ontario Federation of Labour—if it goes contrary to what we are suggesting, then we oppose that.

Mr Wildman: Just a final question: Are you aware that on 2 March 1989 there was a letter sent to the Premier of the province by Laurent Thibault, the president of the Canadian Manufacturers' Association, in which he outlined a number of concerns that the CMA had with Bill 208, particularly the right to stop work, the agency structure and the continuation, as is, of the safety association? He concluded his letter by saying: "I will be calling you early next week to arrange a meeting. I hope the changes to Bill 208

can be made before the ground swell of opposition by our members and others in the business community grows out of control." Then, in October, Mr Phillips, when he spoke on second reading, announced essentially the amendments that Mr Thibault asked for in this letter.

1030

Mr Biggin: Yes. I am familiar with that scenario. The problem—I think I alluded to it in my presentation—is that the employers have a lot of clout, out of proportion to their numbers. Obviously they control a certain amount of wealth and that gives them power. However, from our side, we have the numbers, we have the people, and I think that when you are deciding a piece of legislation, you decide what is best for a majority of the people. I do not think the employers are by any means a majority, nor do they represent a majority.

I stated at the outset that we strongly support the bipartite model. We want to have a partnership with employers to build a better society. But I feel as if they are holding a gun at our heads and at Mr Phillips's head, saying, "Either you do it our way or we are going to bring out the troops."

We can also bring out the troops if we have to and we have on occasion brought out the troops. I do not think that is necessary. I think there has been a little bit of hysteria on the part of the employer community based on the free trade agreement and economic predictions that the United States is not in very good shape and so on and that Canada had better get itself in line.

If you look at what is happening in Europe—again, we are always criticized because we always look to Europe, but we look where we can find suitable models—Europe is preparing for the uniting of various countries by 1992. One of the things they have done there is to set up a mechanism to protect the social programs within those countries. I do not see Mr Mulroney doing this with Canada. I would think it would be very important for the government of Ontario, being the largest and wealthiest province, to take some initiative in this and say: "Look, we want to have good social legislation. We want to protect our working people. We want to protect all of the people." That has to be done. It takes guts and it takes standing up to the employers. I think the government is giving in too easily.

Mr Wildman: I just wonder how the Premier's reaction might have been different if it had been Mr Biggin who had sent this letter warning that his members were getting out of control, whether it would have resulted in a nice meeting

in the Premier's office or wherever, or whether it might have resulted in the troops being called out in front of this building.

Mr Biggin: We usually do not warn people in advance, but it is usually a desperate situation.

Mr Wildman: It is just a rhetorical question.

Mr Biggin: I can only say this in response to your comment that I do not think he has that many troops to bring out.

The Chair: Mr Wildman, some of us have seen Mr Biggin out of control and it is a terrifying sight.

Mr Dietsch: Phil, I want to compliment you on your brief this morning because I feel it is a balanced brief, outlining many of the positive things that are going forward within the bill, the mechanism where workers participate, the workplace committees being in places over 20 and the certified workers, all of which are still encompassed within the amendments of the bill. But in particular, I want to zero in on the bipartite agency, the neutral chairman.

I am curious about your perspective in relationship to an agency that is basically going to be responsible for the development and enhancement of a pool of safety information that is going to enhance education and training for workers, that is going to develop the criteria, if you will, for certification, recognizing that it is based on joint participation and the enhancement of training for workers, which many briefs before us have put forward. It is going to be selected by the participants in the agency, which is made up, as you know, of 50 per cent labour and 50 per cent employers.

I am curious to know how you feel a chairman, who is going to be responsible to that group and selected by that group, is going to change, recognizing what the mandate is in terms of a policy, how that is going to change with regard to being conducted by a neutral chairman.

Mr Biggin: As you know, a chairman plays a very, very crucial role in deciding—

The Chair: This is true.

Mr Dietsch: You will get one vote around this table for sure on that question.

Mr Biggin: —deciding when there is a deadlock. When you have 50 per cent going one way and 50 per cent going the other way, you have a deadlock.

My problem with this, and I will be very frank with you, is that I was appointed to the city of Toronto planning board in 1979. I served there until the Planning Act changed in it to the planning advisory committee, and I stayed on

until around 1987. I got quite an education, because I thought going into that we would have a tremendous amount of influence on planning matters in the city of Toronto. It was not until I got in there that I realized the way a position actually changes a person. You become part of another group. Your reference group—have I lost you?

Mr Dietsch: No, not yet.

Mr Biggin: Your reference group may not be the group that elected you or put you into office or whatever. Now you have a new group of colleagues and sometimes when you are making a decision, you are not making that decision based on your constituent group any more, but you have taken off one hat and now you are supposedly neutral.

You see, I think maybe in the future, after some of the dust has settled, we can have tripartite committees, but I do not believe that with the labour management situation as it is—there are two irreconcilable groups now and it is lucky when we can get the two together to work out solutions—under the present conditions, a neutral chair will work. I said probably every time, but maybe 70 or 80 per cent of the time I think that person will be coerced into supporting the group that has the most clout, and I do not mean clout by the numbers of people or feet that can stamp, but the numbers of bucks that they control.

Mr Dietsch: If the focus—I would hope it would be—were on the issue of health and safety by the agency, and presumably that is what it will be rather than individuals coming to the table with some partisan agenda, I fail to understand exactly how individuals are going to come with some preconceived notion and established positions.

Mr Biggin: But we all do. That is only human nature.

Mr Dietsch: Then you agree with business, then, that the labour people will come with a preconceived notion, or do you think business is going to come with a preconceived notion?

Mr Biggin: I know that is going to be the case.

Mr Dietsch: Which one?

Mr Biggin: Both.

Mr Dietsch: Both are going to come with preconceived notions?

Mr Biggin: Both will come with the interests of their own constituent group. If we need a facilitator, then have a nonvoting chairman. There are all sorts of ways of doing this. But not

somebody who is going to have a vote and that vote is key in any deadlock situation.

The Chair: I would like to continue the debate, but you are starting to get ideological and we must call it to a halt.

Mr Wildman: I am trying to be philosophical, not ideological.

The Chair: We do appreciate your appearance before the committee this morning, so thank you.

Mr Biggin: Thank you very much.

1040

METROPOLITAN TORONTO SCHOOL
BOARD
ONTARIO PUBLIC SCHOOL BOARDS'
ASSOCIATION

The Chair: The next presentation is from the Metropolitan Toronto School Board and the Ontario Public School Boards' Association. If those people would come to the table we can proceed. You may need some more chairs. Ladies and gentlemen we do welcome you to the committee. If you will introduce yourselves, I think you know the rules. The next 30 minutes are yours and we are in your hands.

Ms Waese: I would like to introduce my colleagues: Wendy Mackenzie, vice-president of the Ontario Public School Boards' Association and chair of the OPSBA policy committee; Dr Ned McKeown, director of the Metropolitan Toronto School Board; Dr Jack Murray, the superintendent of capital programming and research with the Metropolitan Toronto School Board.

On behalf of the public school boards in Metropolitan Toronto I wish to thank the standing committee on resources development for this opportunity to present our views on Bill 208. All of the public boards of education in Metropolitan Toronto—namely East York, Etobicoke, North York, Scarborough, Toronto, York and the French Language School Council—have indicated their support for the positions we are presenting today.

We believe that a first-class health and safety program is fundamental to our operations. Our commitment to occupational health and safety is illustrated by the establishment of the Metro-Wide Occupational Health and Safety Resource Centre. The resource centre provides occupational health and safety information, programs and educational resources to the area boards of education. Last year the resource centre developed and co-ordinated a train-the-trainer program to assist boards in meeting the educational

program requirements of the workplace hazardous materials information system legislation. The goal of the resource centre is to support each board's occupational health and safety program. Resource centre staff meet monthly with area board health and safety officers to identify programs and services useful to all the boards.

School board staffs have good working relationships with Ministry of Labour staff. They have worked co-operatively in developing the existing joint health and safety committee structures in the boards. Presently we have 15 joint committees operating among the boards. We appreciate the increased emphasis the proposed amendments place on occupational health and safety in the workplace. However, we are concerned with the impact that some of the proposed amendments could have on existing health and safety structures in school boards.

Our concerns are outlined in our brief and I believe that copies have been distributed to committee members. I would now like to ask Dr Murray to review our concerns briefly, after which I will ask Dr McKeown to make a brief comment and Wendy Mackenzie to make a statement on behalf of OPSBA. Then we would be prepared to answer any questions that you may have.

Dr Murray: Mr Chairman and members of the committee, you have the brief before you. I think we shall just walk through it quite quickly. I think our position on these various matters is clear. If you note, on page 1 we are talking about the six particular areas of concern that we wish to address: the first being the number of joint health and safety committees; the second being the question of health and safety representatives; the third the question of certified committee workers; the fourth the Workplace Health and Safety Agency; the fifth the matter of listing designated substances on construction projects; finally, clarification of the terms "directors" and "officers" with respect to liability.

Our first concern is outlined on page 2 and we have a recommendation at the bottom. At present, in the second paragraph, you will note that regulation 191 from 1984 permits the establishment of one committee for all teachers within a board of education. The third paragraph indicates that orders and agreements have been granted to the school boards in Metropolitan Toronto that have permitted the establishment of single or geographic committees for the support staff, or what is referred to in the brief as nonteaching employees.

This has created the current structures which amount to some 15 committees in the various public school boards within Metropolitan Toronto. It is the position of the Metropolitan Toronto School Board and the area boards that this situation works well and we are reluctant to see it changed. We do not believe that we need large numbers of committees. We make one estimate which we created from counting the number of workplaces we have and the number of employees in the different workplaces, and we came up with 175 committees with four members per committee, four meetings a year and so many hours a meeting. We are up to close to 11,000 hours of staff time without any preparation time for those meetings or any follow-up time.

That is just meeting time and we think this would create an unnecessary duplication. We do not think it would help the cause of health and safety in school boards as workplaces and we have the recommendation to that effect at the bottom of page 2.

A similar concern is expressed with respect to health and safety representatives in workplaces that have smaller numbers of employees. Again, we believe that the legislation, if literally interpreted, would create more health and safety representatives than are necessary by any reasonable standard. We are recommending that boards and schools should be exempted from these proposals because they are simply unnecessary. It is our position that every employee in a board of education has ready access to the committee structures that are operating, either in the case of support staff, through the head caretaker or the union steward, or in the case of teaching employees, through the principal or through the federation reps. Everybody has ready access, a couple of steps or a quick phone call from where they normally work.

The matter of certified committee members is addressed on page 4 and again it is a similar concern. We have certified committee members and we are happy to see them within the existing committee structure. If the committees are multiplied and this requirement is maintained, then in our opinion we are into considerably more certified committee members than is reasonable, and of course there is rotation on the committees and we would be into a very large amount of ongoing training that we find is unnecessary.

With respect to the Workplace Health and Safety Agency, this concern is addressed on pages 5 and 6. We talk there in the introduction about the various safety associations, from the Construction Safety Association of Ontario

through the Transportation Safety Association of Ontario.

We as school boards in this province do not have our own health and safety association. There is a program under the Workers' Compensation Board called the College, University and School Safety Council of Ontario which services the health and safety people and concerns of colleges, universities and school boards, and we are asking that this CUSSCO be recognized as an equivalent health and safety association under the proposed agency.

We think we have distinct needs. We work well with our colleagues in the colleges and universities. We think our needs are quite distinct from the other safety associations that are already recognized as associations. That recommendation is on page 6.

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On page 7, concerning the requirement to list in tender specifications any designated substances on the work site for construction work, we are asking here for an interpretation of "work site" that would mean literally the place where the workers do their work or where they walk around to access services or whatever. We are concerned about situations, say, where we would be working in a large composite secondary school, and we are trying to do a bit of work at one end of the project and here we have labs and technical shops with long lists of hazardous substances. We say that we do not find it reasonable that we would have to list that on the tender because that is not where the work is to be carried out. We are quite happy with the requirement to list it wherever the work is to be done.

Carrying on, on page 8 we are talking about a final clarification with respect to the terms in the proposed amendments. We are not concerned about the intent of this; we just do not want any ambiguity about exactly who it is that is to be responsible. We have different terminology in the school act and in practice. Our elected board of directors or board of governors, our trustees, obviously—many of the committee members know this—and our senior board official is called a director by practice and by the act, and it is fine with most support staff to have trustees and directors designated in this way.

I think that concludes our walk-through of that. Perhaps Dr McKeown would wish to add a clarification.

Dr McKeown: The amendments Dr Murray has presented are essentially technical amendments to the proposed legislation. It is obvious, however, to all members of the committee that

we have currently a serious concern out there about the possible existence of asbestos in one or more of the schools in Metropolitan Toronto. I would like to deal with that very directly, but very briefly, if I could.

The public boards in Metro in the 1980s spent nearly \$30 million removing or encapsulating asbestos in the public schools throughout Metro. We believe we did a very good job in that activity. What we did not do, however, was an equally good job in the follow-up requiring the training of staff in order to do appropriate monitoring in the future to see if any further instances of the existence of asbestos occurred. We are proceeding in that way as rapidly as possible to ensure complete conformity with those requirements.

We want to ensure that the workplace and the learning place are equally safe for workers and for learners, and would make a commitment to the committee this morning that all the directors in Metro have indicated to their boards and to their staff and students and to the general public that if at any time any one of us has any concern about the safety of staff or students in a particular building, we would close that building forthwith, because the safety of the staff and the safety of students has to be an overriding responsibility for all of us.

Ms Mackenzie: I would like to say that the Ontario Public School Boards' Association is pleased to appear jointly with the Metropolitan Toronto School Board before the standing committee on resources development with regard to Bill 208.

OPSBA endorses the recommendations of the Metropolitan Toronto School Board with regard to its concerns over Bill 208 and its impact, most specifically on the educational community. In addition to the specific recommendations which have already been presented, we would like to make a further general recommendation related to the costs of implementing the new legislation.

As you are well aware, school boards are necessarily affected by all workplace legislation. Because so much of the investment in education is people, the cost of any new provincial legislation, such as pay equity, the employer health tax and occupational health and safety are very substantial.

These costs, unless shared fairly between the boards and the province, are contributing quite dramatically to escalating local tax rates. We believe that the costs associated with the implementation of these significant pieces of legislation should be largely provided from

provincial revenues and that the cost should be in addition to the basic costs of providing education.

OPSBA therefore recommends that any additional cost associated with the implementation of new requirements in the occupational health and safety field be reflected in increased expenditure ceilings eligible for grant assistance.

Thank you for being able to make those comments.

The Chair: Just before we start, on page 6 of your brief you talk about not really wanting to come under some other safety association if this new health and safety agency becomes a fait accompli. Has anybody in the college, university or school system had meetings on this to talk about setting up your own safety association? Has it gone anywhere? Because government will not appoint it.

Ms Waese: Perhaps Dr Murray can answer that.

Dr Murray: I am not sure.

Ms Waese: Has CUSSCO discussed it with us?

Dr Murray: I believe there have been extensive ongoing discussions and preparations among this group to accomplish what we are recommending.

Ms Waese: We have one of the people who have done some research on that particular aspect. Jane, would you respond.

Ms Player: The CUSSCO executive has requested the Workers' Compensation Board to make it into a safety association like the other safety associations. I believe the Workers' Compensation Board has responded that while Bill 208 is before the Legislature it does not want to form any new safety associations. That leaves us in a bind because once Bill 208 is passed CUSSCO could not be formed into a safety association, so it is very important that we get this safety association established now.

Mr Wildman: I want to thank you for a concise brief that deals with some specifics. That is useful to us. Just as a preface to this, while I accept and frankly agree with your position regarding costs, that is beyond the mandate of this committee and that unfortunately is something you are going to have to negotiate with the government. The committee has to deal with Bill 208. We cannot vote moneys.

Ms Waese: In making your recommendations you will not be taking under consideration the cost implications at all?

Mr Wildman: No, we will be dealing with the bill clause by clause. We could make a recommendation, of course, to the House.

The Chair: If I might, the committee could in principle move an amendment that did this if the committee decided to do that.

Mr Wildman: Certainly. That would have to come, I suspect, from the government though since it would be a money amendment.

I would like to ask a couple of things. I appreciate your comments regarding the asbestos situation, because as you might expect we have had representatives from CUPE before this committee who have raised concerns about that.

Ms Waese: We anticipated that.

Mr Wildman: You talked about the certified worker members and the certified committee members and how you thought that would work. You did not, though, specifically state your position with regard to the right to stop work, the extension under this bill of the right to stop work. Is it the position of the Metro board or the boards in general that they support the concept that certified members of the committee should have the right, if they believe there is a hazardous situation to staff and students, to shut down the workplace or a portion of it until the matter can be dealt with, without having to get approval from senior supervision?

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Ms Waese: I will tell you what the practice has been in our schools. We have a mandate that the safety of the children comes above all. That is our major primary responsibility, but in actuality, in terms of legislation, I would ask Dr Murray to tell you.

Dr Murray: We have been silent in our brief on this matter—we realize this is a very contentious matter—because it does not seem to be an issue in school boards or among our workers. I will have to be corrected on this. It is my belief we have never had a complaint or a dispute about this. If there is a question, as Dr McKeown indicated, we shut her down. It is our belief that the judgements made and the support for the judgements made by principals, especially in the schools, are quite scrupulous. If there is concern or complaint, regardless of who expresses that complaint, whether it is certified or this way or that way or from a committee, it is dealt with and it is dealt with directly. It has not been an issue and that is why the boards are silent on this matter.

Mr Wildman: Okay; I appreciate that.

Just one other short point: If you were to form a safety association, and you indicated you have had discussions on this matter, is it the position that the representation, the directors of such an association, should be 50 per cent staff?

Dr Murray: I am not sure we have a position on that.

Ms Waese: Jane has been our lead person in working on this act.

Ms Player: I do not know if I can answer your question directly, but I do know that the CUSSCO executive is currently rewriting its constitution to allow for labour and management representation on the board of directors. I am not sure that answers it. It would be in line with what is proposed under Bill 208, an equal representation.

Mrs Marland: I just want to go on record as a member of this committee who thinks the Ontario Public School Boards' Association is right on with its comments this morning. I think they are absolutely dead right about adding in their comments a request that this committee consider recommending to the government that the additional costs or any additional costs associated with this implementation of Bill 208 be reflected in increased expenditure ceilings eligible for grant assistance. Over and over again, the local taxpayer through his property taxes is covering the cost of these new provincial programs, and certainly the employer health tax is one very good example.

As a member of this committee, I will be moving a recommendation which I will have to phrase very carefully, because with six members of the government party versus two in my caucus, and I am sure that—

Mr Wildman: We would certainly support it.

Mrs Marland: —the two members of the New Democratic Party would support the protection of the local taxpayer as well. I am not living in Alice in Wonderland, so I do not hold any hope that recommendation or an amendment to that effect would carry, but I think it is time this message got out loud and clear and I, for one, appreciate your being here this morning and bringing that important message. It applies over and over again in the last few years with new Liberal government legislation. We are up to 270 briefs and I think you are the first brief that has mentioned that to us through these five weeks of hearings. It is a very significant point and recommendation that you make.

Also, I would like to say as a former school board trustee that I know that it does not require

any additional legislation from any government, whoever they are in the province, to tell school boards how to protect their staff and children from the standpoint that you carry the biggest responsibility of all when you have other people's children in your buildings. Based on the experience of evacuations for any number of reasons that have gone on around this province, the responsibility that is given to you as elected representatives, and to us as elected representatives, is obviously being very well carried out at the school board level without any more direction from the province.

Mr Fleet: I want to thank you all for the joint presentation and a really excellent brief because it is so specific in terms of making recommendations. Before I ask a question about one of your recommendations in particular, I must say that we did have some evidence, I think it was in St Catharines, from an insurance company that suggested that it may well be that with improved health and safety measures the net costs to an organization will be lower, not higher, because of the lost time and problems that arise when people are injured.

It is very difficult to ascertain on an industry-by-industry basis, but certainly there has been evidence to that effect. I think as a general concept that is something at least I agree with, and I suspect most people would agree that if you can keep injuries down, everybody wins financially and otherwise.

The question I want to focus on is your last recommendation where you seek a clarification on the liability of trustees and board officials. I think the provision you are referring to, which would create a liability for the first time for directors and officers of corporations, is quite important. I am sure that in making this recommendation you were not seeking to avoid liability for trustees.

I guess trustees can be easily enough defined. I am wondering if you can help make a suggestion as to the level at which we would be describing people in the administrative side. I can see directors as an obvious one, but after that I am not sure. What your recommendation would be would be quite important, in my view, given that we are going to start clause-by-clause next week.

Ms Waese: I will have Dr McKeown answer the second. I will just comment on the first in terms of safety and saving of costs ultimately. I agree in terms of the safety, I would say. I guess we are particularly focusing on our structure and the number of committees. If we take it to the letter of the intent, it could be significant in terms

of multiplying, beyond doubt, how many committees—we indicated something like 130 committees as opposed to 15 and the kind of staffing you have to meet. Multiplied over a year, that would be significant dollars for us. So it is the structure as opposed to the safety that we are really referring to.

Dr McKeown: At the risk of upsetting some of my colleagues across the province, I believe the only appropriate officer of a school board to put on the line is the director. The director is a position that is identified in the legislation. As a director, I, along with my colleagues, would have the ultimate responsibility for what goes on administratively. I think to go beyond that point would not be a useful thing to have in the definition.

School boards vary so much in size, from a board that may have 10,000 staff and a lot of support people in administration to another board that may have only a few hundred people and the director is the only officer, as it were, aside from perhaps a business and finance official. So it would be my position that the term "director" in the legislation or the term "officer" perhaps would be better defined as the "director of education of a school board." Then a definition of "trustee"—trustees fill the role that in essence directors in a private corporation fill and they are the governing body.

Ms Waese: I think they are often referred to in any legal aspect as the board of trustees, so you get the corporate body.

The Chair: Thank you for your presentation this morning, and in particular the very useful format in which it was presented.

Ms Waese: Thank you very much. I will just conclude by saying to you that the boards are very much prepared and willing to meet the challenge. We ask only that the challenge be presented without the unnecessary costs or constraints.

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OCCUPATIONAL HEALTH AND SAFETY INSPECTORS

The Chair: The next presentation is from the health and safety inspectors in the province of Ontario. We welcome them to the committee and look forward to their brief, given their particular expertise. Gentlemen, welcome to the committee. I think you know the rules, that you have 30 minutes to make your presentation and have an exchange with members of the committee. If you

would introduce everybody there, we can proceed.

Mr Giasson: My name is Gerry Giasson. I am an inspector with the mining branch. Here with me is Ken Armstrong, directly to my right, who is an inspector with the construction health and safety branch. In your handouts you have Keith Rothney, who is unable to be with us today. In a consultative role we have Bob DeMatteo, who is the health and safety representative with the Ontario Public Service Employees Union.

We are here to present the concerns of Ontario's occupational health and safety inspectors who are represented by the Ontario Public Service Employees Union. We agree with the many others who have appeared before you and told you that the number of workplace injuries and deaths in this province is absolutely unacceptable.

As inspectors, we have firsthand experience with Ontario's health and safety system. We deal with workplace inspections, complaints, accident investigations, work refusals and joint committee disputes. We are in a strategic position to assist the committee in its deliberations on Bill 208.

Let me say now that we have serious reservations about the proposed amendments to Bill 208. They will not adequately address Ontario's worker health and safety problems. Allow me to elaborate.

The role of inspectors as enforcers: As inspectors who are responsible for enforcing this province's safety laws, we support the internal responsibility system, but the internal responsibility system cannot work on its own without the assistance of a firm system of external enforcement.

Inspectors cannot be viewed merely as facilitators for the internal responsibility system. The workplace parties have to know that we are prepared and equipped to enforce the legislation. They must know that when we enter the workplace we have a clear intention to issue orders and force compliance when contraventions and hazards have not been dealt with by the internal responsibility system.

Unfortunately, the current legislation leaves the exercise of enforcement to the discretion of inspectors and policymakers. Therefore, there is no legal obligation to enforce the act or regulations when violations occur.

This has resulted in the inconsistent exercise of powers and sanctions. It has made inspectors vulnerable to the political process. These problems were investigated by the McKenzie-Laskin

review and were for the most part corroborated, but the review absolved the occupational health and safety division of any wrongdoing because it was carrying out the self-compliance philosophy.

According to the review, since the division's role is that of a facilitator in a system of self-compliance, its actions or inactions are permissible and acceptable. Under such a system, there is no compulsion to comply.

Therefore, we make the following recommendation: The inspectorate must enter the workplace with the clear intention to inspect, issue orders and force compliance through sanctions. It must be legally compelled to exercise its powers whenever a violation of the act or regulations occur.

Right now inspectors have few flexible enforcement tools to force compliance. In fact, outside of court prosecution, no other sanctions are available to us and using the courts can be frustrating. Court prosecutions are expensive. They are long and drawn out and sometimes take up to three years. They are difficult to win because of the burden of proof required in law, and when prosecutions are successful, the financial penalties are pitifully low. In 1987-88 the average fine was \$2,346. The maximum allowable fine is \$25,000. That is not a real deterrent to potential offenders.

There is a very small return for the effort involved in going to court. Because of that, it is not a sanction that has been readily used. In the 1986 auditor's report it was noted that "orders were not being considered for prosecution unless an accident had occurred in the workplaces." In fact, in the year preceding that report, 80 out of 91 prosecutions were initiated only after there had been a workplace accident.

In 1987-88 only 62 per cent of industrial sector prosecutions led to convictions, and well over 60 per cent of all charges laid were dropped by the ministry or dismissed by the courts. It is clear that a more effective form of sanction is needed. It needs to be inexpensive, flexible and severe enough to be seen as a deterrent.

In our view what is needed is a system for the imposition of civil or administrative penalties. Inspectors need the power to issue on-the-spot citations that carry heavy fines. The fines should be graduated on the basis of the gravity of the hazard and/or past safety records. This method of enforcement would arm inspectors with a more direct and plausible role in workplace health and safety.

Therefore we make the following recommendation: Establish a system of civil or administrative penalties that can be imposed by inspectors whenever a violation of the act or regulations occurs. These penalties would involve monetary fines levied by the division that could be appealed to an independent appeal board.

As well, we see a statement of purpose missing in the legislation. One of the underlying weaknesses in Ontario's health and safety legislation is that there is no statement of purpose. This is very frustrating for inspectors because frequently we cannot make a decision or resolve a dispute because there is no set of regulations that can address every hazard or situation we encounter.

Given a statement of purpose, inspectors would have a legal and discretionary avenue at our disposal to make decisions when there is no specific and detailed regulation to cover the situation we are investigating. A joint committee would have a mechanism for resolving disputes over issues which go beyond the minimum standards.

Therefore we make the following recommendation: The act must have a concise statement of purpose to guide the activities and behaviour of all actors. We propose that the definition of "occupational health" adopted by a joint committee of the World Health Organization and the International Labour Organization form the purpose of Ontario's legislation.

I would like to speak to you a little bit on the internal responsibility system. The McKenzie-Laskin review justified lax enforcement of the Occupational Health and Safety Act on the "basis that the internal responsibility system prevails and underlies the legislation."

Well, the concept of IRS is not even mentioned in the act, and the recent advisory council survey showed that the internal responsibility and joint health and safety committee systems were not functioning effectively. In the few instances where the committees do function well, the survey found that a strong presence of ministry inspectors and a strong and active trade union were the key reasons for success.

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The Law Reform Commission of Ontario's paper 53 found the major weakness in the internal responsibility concept lies in "the generally advisory and consultative role of committees." Under this system, there is little incentive for employers to comply with the decisions of joint committees or to make serious attempts to resolve health and safety issues.

If you are truly committed to the internal responsibility system and want it to work, then we must provide the system with some strategic mechanisms that encourage the resolution of issues and internal compliance:

1. The system must be legally codified so that all players know their duties and responsibilities.

2. A prescribed sector-specific format for maintaining minutes must be established. This would provide a clear identification of the issues, target dates for their resolution and how these were resolved or not resolved.

3. The act must require that employers develop health and safety practices jointly with employee representatives.

4. Employers must be required to respond in writing to committee recommendations within seven days; 30 days is too long to leave health and safety concerns unaddressed. This will lead only to needless delays and frustration, particularly where hazards are serious.

5. Certified members must be enabled to issue provisional improvement orders where contraventions occur. In this case, should an employer not agree to comply, an inspector must be called in to investigate and issue a decision.

6. Worker members of joint committees must be given clear duties and obligations to initiate inspections and investigate worker concerns.

At this point, for the the remaining part of the brief, I would like to call on Ken Armstrong.

Mr Armstrong: This section deals with the power to shut down unsafe work. The power to shut down unsafe work could possibly contribute to the effective functioning of the internal responsibility system, but we have some serious reservations about how this can work effectively under the current drafting of Bill 208. In fact, it raises more questions than it answers.

1. The issue of whether workers will be paid during such shutdowns is not addressed in the bill. If workers are not paid, there could be great peer pressure put on certified members not to use this power.

2. How will disputes over such shutdowns be resolved, and who will resolve them?

3. Will certified members shut down an unsafe operation knowing that they risk being decertified and disciplined if they do not meet the onerous burden of proof required?

4. Employers could continually harass certified members by filing frivolous complaints against them. There is no protection against this.

5. While a modified shutdown provision may work in a large unionized workplace, we have difficulty—I might say especially in the construc-

tion sector—understanding how this could work in a small nonunion shop. It leaves great questions.

These issues have not been clearly worked out.

The right to refuse unsafe work: Inspectors have some serious major reservations about the current right-to-refuse provisions. In our experience employers have assigned other workers to perform refused work, even before an inspector investigation. In fact they are fired summarily and regularly. It is unacceptable to force another worker to undertake duties which one worker suspects to be hazardous—

Mrs Marland: I am sorry. You interjected a sentence there and it was rather significant. Do you mind repeating it?

Mr Armstrong: I say that in my experience employers have assigned other workers to perform refused work, and in a lot of cases in fact fire workers for refusing to work. The bottom line with some major employers in the province is that you have three options: You work, you quit or you get fired.

It is unacceptable to force another worker to undertake duties which one worker suspects to be hazardous and an inspector later finds to be truly dangerous. This approach is foolhardy and outright negligent.

The right-to-refuse provision is unreasonably restrictive. It ought to include any and all injurious work practices and activities that inflict immediate and long-term illness on workers, not only equipment and physical conditions.

We disagree with the minister's recommendation to restrict the application of activity to those which present only acute and immediate threats to health or safety. The restriction and exemption of whole groups of public-sector workers from the right to refuse are not justifiable and are unacceptable.

These workers face real life-threatening hazards that in most cases have nothing to do with the essential aspects of their jobs, and they should have a right to expect that the risks that do inhere in their work are adequately managed.

The fear that the exercise of this right will disrupt essential service or endanger the public has not been supported by experience in other jurisdictions that have this right. In fact, such loose and broad restrictions only encourage delay and complication in addressing workplace hazards.

Finally, the provision which guarantees pay only during the employer's investigation defeats the whole purpose of the refusal provision. In effect workers will be forced back to work before

we have had an opportunity to evaluate the concerns. This will create a profusion of reprisal complaints and will seriously threaten workers' safety.

Our recommendations are: prohibit the re-assignment of refused work to another worker, broaden the application of "activity that is likely to endanger," remove all exemptions and restrictions on the right to refuse, and remove the restrictive pay provisions.

With respect to employer reprisals, it is our experience that the current prohibition on employer reprisal is not effective. We have seen employers deliberately retaliate against workers in an attempt to intimidate the rest of the workforce.

Even when the Ontario Labour Relations Board rules that the employer has acted improperly, the employer suffers no penalty for a clear violation of the act. In most cases the ministry does not prosecute employers for violating section 24 of the act, so employers do not view the prohibition as having serious consequences. Ontario Labour Relations Board rulings to reinstate or pay workers for lost wages does not sufficiently stigmatize or penalize such violators.

Our recommendation is to amend the act to ensure that section 24 violations are subject to prosecution through ministry channels.

It is our view that the current appeal system provided in section 32 is wholly inadequate and improperly constituted to help our health and safety system function effectively. The current appeal system is not independent and lacks objectivity. Administrative justice requires that the deciding body be sufficiently detached from the agency whose decisions are in question. Without this detachment, the legitimacy of the system will always be in question.

The framework of the present system is narrowly legalistic and lacks occupational health expertise. The process offers no assistance in resolving contentious health and safety issues. In short, the present system prevents the consolidation of expertise needed to deal with occupational health and safety questions. It militates against the development of appropriate remedies.

We propose that the currently fragmented legal structure be streamlined and focused on occupational health. Under this system, an independent occupational health and safety board would consolidate those functions now carried out by the appeals director and the Ontario Labour Relations Board under sections 32 and 24 respectively.

It would have jurisdiction to hear and decide the following measures: appeals from orders, decisions and civil penalties issued by inspectors; appeals from joint health and safety committees or joint committee members with respect to unaccepted recommendations for improvements in the workplace; complaints from workers alleging employer reprisals.

I might ask the committee to turn to the addendum in the back of the book. We would like to talk about this health and safety agency.

Bill 208 establishes a new health and safety agency to oversee all training and research in health and safety. While we support this concept, we have some difficulty with the agency's disciplinary role.

We do not think that the agency should be given the power to discipline and decertify workers. This will inhibit the development of co-operation between the workplace parties. It is not appropriate for this body to be embroiled in labour relations disputes. It will only encourage already fractious relations. The employer already has the power to discipline its workers for insubordination. It is not proper to place workers in a double jeopardy situation.

More importantly, we have even more difficulty with the possibility that the agency will be given the regulatory and enforcement powers currently exercised by the Ministry of Labour through its occupational health and safety officers and inspectors.

We firmly believe that health and safety standards must be formulated and enforced by the government like any other public health standards. It is absolutely dangerous for government to give up this role to what is basically a constituent agency. There are serious questions regarding public accountability if such an initiative is undertaken.

In closing, we would like to stress that we have no agenda other than to reduce workplace injury and disease. Effective changes to our safety legislation are absolutely vital to the working citizens we are to serve and protect.

1130

The Chair: Thank you. We have about 10 minutes left.

Mrs Marland: Gerry, do I remember you from when we did the mining investigation in this committee?

Mr Giasson: That is correct.

Mrs Marland: Let me just say at the outset that I think this is a very significant brief. In fact I must admit that when I looked at it before you

started, I thought, "This is sort of interesting, that the government's own inspectors are coming." Of course, I did not start to read it until you did since we just received it. There is a lot of material here that, because it comes from you, makes it even more significant.

I am very open about what I have been saying and what I think, about the fact that we have existing legislation that is not being enforced. There are some of the disgusting, terrible examples we have had in the past four weeks, where there are incredible violations resulting in terrible injuries, and worse than that, the fatalities. From the management side and the employer side, we hear, "We do not need any more legislation." That may be true if we could even get what we have enforced, because what we have as law today in the province could provide protection for workers. But to hear this from you as inspectors about what is going on today—I know you are commenting on Bill 208, but you are also giving us a picture in this brief about what goes on even with existing legislation and that I think is a very, very serious concern.

On page 3 you changed a word and I found it rather interesting. In the fourth paragraph down, it says, "It has made inspectors vulnerable to political interference." You did not say "interference." You said "process." Was that an intentional change?

Mr Giasson: Yes, it was. I thought it was a more appropriate word than "interference." We have dealt with the whole process of McKenzie-Laskin, if you recall, that review that came through, and I do not think we have to go back and elaborate on what they said at that time. I discussed it under the internal responsibility system. That was the reason for it.

Mr DeMatteo: I will just mention that you can take a look at the inspectors' submission of September 1986, I believe. It contains a full disclosure of how the political process actually interfered with what these people were trying to do in enforcement. You might refer to that, and to the two-volume McKenzie-Laskin review which corroborates much of that.

Mrs Marland: One of the things we found, and it is significant in discussing Bill 208, in our six weeks, at 17 mines in this province is that we did learn of one or two inspectors who had been doing a very good job and then had been moved, coincidentally. I can even remember the mine. I am not going to name it, but I remember one location where we found that out.

One of the things that has come up a lot in the last four weeks is the number of inspectors. The

favourite line of my colleagues to my right is that there are more inspectors for fish and wildlife and whatever than there are for labour and the protection of the workers in this province. I do not need to know how many inspectors there are because that will not be significant for me in terms of I do not know how many workplaces there are, but on average, how many work sites does an average inspector have? They are supposed to inspect them once a year.

The Chair: When you have completed that answer, we will have to move on because we are quickly running out of time. Go ahead.

Mr Giasson: It differs between the industrial, construction and mining sectors. Really what it boils down to a lot in this day and age is looking at what is happening in the workplace. If you do have strong union involvement, what we have found, particularly in the mining sector, is that your inspection frequency does not have to be as great.

Mrs Marland: No.

Mr Giasson: Obviously in the construction sector it is very frequent because of the migrant workforce. In industrial, we have a complete change-around. We have very big organizations and we also have very small ones, so the very small need more attention probably than the larger, so I cannot put an exact figure on it for you. It does vary.

Mrs Marland: But in an unorganized workplace—

The Chair: I am sorry, Mrs Marland, but we are going to have move on, because there were only 10 minutes and six minutes has gone already and three other members still want to ask a question. I think we really must move on.

Mr Wildman: on page 2 of your brief you make the statement that: "We have serious reservations about the proposed amendments to Bill 208. They will not adequately address Ontario's worker health and safety problems." You go on and you talk, as Mrs Marland was referring, to "inconsistent exercise of powers and sanctions. It has made inspectors vulnerable to the political process," as you indicated.

A number of labour groups have come before the committee and suggested we should give the inspectors the right to issue sanctions, something like traffic citations. If you are found to be breaking the speeding laws, the policeman can give you a ticket, and you can either pay the fine or if you want to appeal it later, of course in that case you have an appeal to the court. You are

suggesting there might be some tribunal that appeals could be made to.

If you people had the possibility of issuing citations which would result in fines, unless there is an appeal, and if the political will was there to give you the right to exercise the enforcement powers under the act, do you think there would be situations that you are facing now, where you are having to wait essentially until after there is a serious accident before the proper cleanups take place?

Mr Giasson: Most definitely. With regards to the health and safety legislation, if we have to run to the courts with every little detail of violation that occurs, the court system in this province, we believe, cannot handle it. It is impossible. It is going to take delays. It is going to cost dollars. We do not think it is a feasible way of dealing with health and safety in the province. We think there are other ways that can speed up the process in a much more economical fashion, and yes, a ticketing system of some sort—in fact that option is available in some branches, to the construction officers. In other branches, it is a discretionary thing but we do believe that that is a process that can be—

Mr Wildman: Thank you.

The Chair: The last question, Mr Dietsch.

Mr Dietsch: During one of our presentations an employer group made a recommendation to the committee in reference to certified workers who unnecessarily used their power for some other purpose than health and safety, that the employer should have an opportunity to file a charge against them with respect to due diligence, if it can be proven that it was for no other purpose than to obstruct the workplace.

With your kind of experience, would you support that kind of presentation from individual employers based on the fact that you have said that due diligence is very difficult to prove, recognizing that there could be an opportunity out there, and we have heard of some particular instances from different employers? Would you support that kind of a process?

Mr Giasson: Ken has talked about that so I should let him.

Mr Armstrong: There must be for those persons in the workplace who make those decisions with respect to the right to refuse to work, some clear understanding as to their authority to do such. They must be free, almost sacrosanct, from some form of employer sanction or reprisal and such is not the case now. With the legislation we have in place today, where it is

clearly a violation to reprise a worker for refusing to do unsafe work, I am here today—

Mr Dietsch: I am not talking about those. I am talking about the ones where employers can prove due diligence, that they have in fact abused their privilege. That is what I am talking about. Do you feel that they should be eligible to be liable?

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Mr Armstrong: I think a properly trained worker, a health and safety committee man—

Mr Dietsch: Yes, a certified worker.

Mr Armstrong: They would be very hard pressed to find that in fact he did not exercise his option to refuse in a reasonable manner.

Mr Dietsch: But if they can prove it, should he be liable?

Mr Armstrong: Yes, I would think so if there was substantial proof, but in my experience, 20 years as a safety professional, I cannot recall one frivolous complaint in 20 years in the construction safety business, not one frivolous complaint have I ever attended.

Mr Dietsch: How do you word the complaints? I believe there is a certain phrase that you say, "It is not endangering"?

Mr Armstrong: "Not likely to endanger."

Mr Dietsch: "Not likely to endanger." I am sure there have been many of those kinds of cases over the 20 years.

Mr Armstrong: It comes down to the inspector's decision at that point, when he is called out, that either it is in contravention or it is not in contravention and is not likely.

Mr Dietsch: But You would support the worker being held liable when they can in fact prove negligence.

Mr Armstrong: I think so.

The Chair: Thank you for your presentation. We know that hearing from the inspectors themselves is an important part of this process for the committee. We appreciate your presentation.

ONTARIO GENERAL CONTRACTORS ASSOCIATION

The Chair: The final presentation of the morning is from the Ontario General Contractors Association. We welcome you to the committee this morning. The committee has a copy of your brief. I think you know we allow 30 minutes for each presentation. We look forward to hearing your views. If you will introduce yourselves, we can proceed.

Mr Tindale: My name is Jock Tindale. I am the vice-president of McKay-Cocker Construction in London, Ontario. With me are: Joe Keyes, who is the director of personnel for Pigott Construction, located here in Toronto; Al Trappman, vice-president with PCL Construction; and Jim Schwindt, the president of Traugott Construction in the Cambridge area.

I guess the good news is that we are the last delegates you have to listen to before lunch, and the bad news is you have to come back on a Friday afternoon to listen to a whole bunch more.

I would like to present the brief. It is coming from the Ontario General Contractors Association.

On behalf of the Ontario General Contractors Association, we express our appreciation to be able to meet with the standing committee on resources development today to express our views and explain our concerns and recommendations on certain matters contained in Bill 208, An Act to Amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The OGCA is an association whose membership is limited exclusively to general contractors active in the province of Ontario in the commercial, industrial, institutional and high-rise residential sectors. Our membership is made up of a wide range of companies whose annual volumes may vary from less than \$1 million to over \$1 billion. These member companies account for 70 per cent to 80 per cent of the commercial, industrial and institutional construction in the province of Ontario.

Looking at the construction industry record, in an overview of it, the Ontario construction industry when viewed over the last 22 years "has, on average, become consistently safer since 1966." This quotation is by the Ontario Ministry of Labour in its publication Construction Safety in Ontario, dated August 1989.

The Ministry of Labour goes on to point out the following facts:

"Ontario's construction safety record is one of the best, if not the best, of the 10 Canadian provinces, and compares favourably both with the United States and with such European countries as France and Sweden."

In 1987, man-hours worked had increased from 302 million in 1966 to 372 million, yet lost-time injuries dropped from 20,190 in 1966 to just over 17,000 in 1987, with the corresponding frequency from 66.7 in 1966 to 46.9 in 1987.

In 1966 with 202,000 workers there were 72 deaths with a fatality rate of 35.5 per 100,000 workers. This has reduced dramatically such that

in 1987 with 307,000 workers there were 42 fatalities and a frequency rate of 13.6 per 100,000 workers.

These statistics published by the Ministry of Labour indicate a continuing improvement in health and safety on all construction sites throughout the province. This is a record the construction industry has strived to maintain and one that all contractors are proud of.

The OGCA recognizes that health and safety is an area requiring continuous improvement regardless of previous history. However, we recommend that any changes made towards improvement will only be successful if they are built on previous successes.

The OGCA's relationship to health and safety: The Ontario General Contractors Association has over the years established health and safety as a major priority.

In 1986 the OGCA updated and produced an association safety policy and reference manual to be used by all of its members. Contained in this publication is a member policy statement which exemplifies the general contractor's commitment to health and safety. It reads:

"As a member of the Ontario General Contractors Association it is the policy of this company to perform work in the safest possible manner consistent with the Occupational Health and Safety Act and regulations for construction programs.

"It is our belief that every employee in the construction industry is entitled to work in a safe and healthy construction environment. Every reasonable precaution shall be taken to provide such an environment.

"Our goal is to eliminate or minimize the hazards which cause accidents and injuries."

General contractors have a profound vested interest in health and safety due to the fact that on 90 per cent or more of all construction sites it is the general contractor who bears the responsibility of being "the constructor" under the Occupational Health and Safety Act and shoulders those responsibilities and penalties that go with this legislation.

It is with our policy statement, knowledge of the construction process and constructor responsibilities in mind that we address our comments on Bill 208.

On 27 February 1989 the OGCA met with the former Minister of Labour, Greg Sorbara, and summarized our concerns on Bill 208 to the minister in a letter of the same day. Those concerns were:

1. The legislation must establish the process as one of co-operation, not confrontation.

2. It must be recognized that employers and all workers—nonunion, Christian trade and AFL-CIO—must be involved in the co-operative effort to make the construction workplace a safer environment.

3. It must be recognized that the construction industry is unique and that rules, procedures and operating conditions are dramatically different from fixed industry. This uniqueness makes the present legislation impractical and unworkable with respect to workers' certification and mandatory joint health and safety committees. These areas must be reassessed.

4. It must be recognized that some 350,000 workers, ie, the nonunion sector, cannot be denied the right to input through their own worker representatives at the board level of the CSAO.

5. The CSAO cannot be relegated to a departmental instructional group, but must remain as a leader in the construction industry, recognized worldwide in the areas of education, training, research and advisory services.

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This was our summary of our meeting in February 1989. Subsequent to our February 1989 meeting we are encouraged by the fact that the Minister of Labour has suggested amendments to the proposed legislation, some of which have partially addressed some of our concerns. These are:

1. The Honourable Gerry Phillips in his remarks dated 11 December 1989 acknowledged the uniqueness of the construction industry where worker turnover is high and has thus recommended that certified representatives would only be required on projects where there are 50 or more workers.

2. The Construction Safety Association of Ontario will be allowed "a greater degree of self-determination" and "would be free to decide how to compose their board" equally of management and worker representatives. It is mandatory that the CSAO remain autonomous such that it may continue its recognized position as a world leader in the area of health and safety.

3. The Honourable Gerry Phillips has emphasized team work. He has also emphasized partnership. We fully endorse this approach since it will help to develop management-worker co-operation and eliminate the confrontation which cannot be allowed to exist in the issue of health and safety.

After recognizing the above, the OGCA must, however, continue to express a deep concern over the fact that the Minister of Labour's amendments have not gone far enough. It is not our intent to rehash issues that have been thoroughly discussed by other construction industry associations. We wish to state, however, that we do agree in principle with positions taken by others and in particular endorse the Council of Ontario Construction Associations brief.

Our intent here today is to zero in on the uniqueness of the construction industry. It is our intent to help you as panel members to understand the construction industry.

Bill 208 has been prepared with fixed industry in mind. Bill 208 does not fit the construction industry or assess its needs. Fixed industry may be briefly described as environmentally controlled workplace; fixed number of workers; worker's average length of employment with the same employer may be in the order of five years; a consistent workforce; workplace located in close proximity to the residence; workplace in the same location for 10 years or more; workers usually have a very good knowledge and understanding of the entire fixed industry process; work is produced in fixed industry by only one or a handful of trades.

The construction industry may be briefly described as open to the environment, such as today; continually changing numbers of workers; new workers hired for every project and throughout the length of the project; an ever-changing workforce; worker's average length of employment with the same employer measured in weeks or months; workplace location changes on average every eight months; workers have knowledge and understanding of one trade only, and that is one out of 20 trades in the project; the work on the project is produced by up to 20 different trades including 40 or more individual subcontractors at the same workplace, which is dramatically different than fixed industry.

For Bill 208 to be successful it must be both practical and workable. For the construction industry it must be industry-specific and must speak directly to our industry's uniqueness and its concerns.

To further explain, I would like to just digress for one second. The construction industry and, to use an analogy—forgive me if I am oversimplifying, but we are involved in the construction industry. We live with it every day and to us it is the norm, but in order to explain its difference, may I use the example of a branch office.

A branch office in fixed industry is a building that might be 20,000 or 10,000 square feet. It has walls and a roof and is heated and it is there for a large number of years. In construction, we as companies develop staff, produce a product and then close that branch office and we do that every six or eight months on the norm and we do it on maybe 10 or 15 projects throughout the province.

We are continually going to a different geographic location, starting a brand new business, which is a project site, staffing that project site with new people in the area whom we have never met before, carrying out a manufacturing process and then winding down the business, laying those people off and going on to another place and doing it. As a company, we may have 10 or 20 of those branch offices starting and closing on an annual basis, which is dramatically different from fixed industry.

To further point this out, we review the following issues: (1) joint health and safety committees and trade committees; (2) worker certification; (3) right to stop work.

First, joint health and safety committees and trade committees: OGCA supports the concept of expanded use of joint health and safety committees on projects of six months' duration and 50 or more workers. OGCA does not support and is totally opposed to the concept of a separate trades committee on construction projects.

Bill 208 states, "It is the function of a worker trades committee to inform the committee at the workplace of the health and safety concerns of the workers employed in the trades at the workplace." What then would be the purpose or function of the joint health and safety committee? Do we in fact now need a management committee?

To quote the Honourable Gerry Phillips, the intent of Bill 208 is to "emphasize teamwork" and "emphasize partnership." The concept of a trade committee encourages individual crusades and hidden agendas, breaks down any teamwork and fuels confrontation.

Joint health and safety committees exist today on a voluntary basis throughout the construction industry. In the majority of cases they have worked very well, but in all cases the prerequisites have been agreement by all parties on the member makeup; jointly defined goals established; openness and frankness between committee members, workers and management.

The minister has insisted upon teamwork and partnership. The OGCA has insisted on a process of co-operation such that confrontation is eliminated in all health and safety issues. It appears

that we agree. Trade committees and the resulting confrontations will not meet our agreed-upon objectives. We recommend the following: (1) expand the use of joint health and safety committees on projects of six months' duration and 50 or more workers; (2) exclude the requirement for trade committees.

Second, worker certification: The certification of a specific group of workers and management representatives impacts dramatically on the internal responsibility system which promotes the shouldering of responsibility by individuals.

Our concern is that by creating this specialist or élitist group, workers' attitudes will change such that they will no longer as individuals feel responsible for their own safe work habits. An élite group of certified individuals will be looking after them.

A second concern within the construction industry is the necessity to continually staff new projects in different geographic locations throughout the province. How could an adequate supply of certified workers be made available to all areas? Who will be responsible to supply the individual to the project, the constructor, the subcontractor, the owner? Will an individual from southern Ontario be trained satisfactorily to be employed on a project in northern Ontario where construction methods and conditions are different?

We believe that the concept of a certified worker in the construction industry is impractical and unworkable. Moreover, it hands big labour a big stick as opposed to giving the worker on the project site more say and control over his working conditions.

We believe that the emphasis must be put on further education and training, including mandatory pre-employment safety training for all workers such that the internal responsibility system may be further developed and enhanced.

Third, right to stop work: The OGCA is vehemently opposed to the idea that an individual be vested with the authority to shut down a construction project, and at the same time is not accountable for his actions.

Construction projects are unique workplaces. With some 20 different trades and 40 or more subcontractors employed on a project many hidden agendas exist.

The unilateral power to stop the project is extremely dangerous and would be a very tempting means to an end. Health and safety cannot be a negotiable issue. Health and safety cannot be prostituted and used to resolve such things as contractual disputes, jurisdictional

disputes, labour negotiations or any other subject outside the realm of workplace health and safety.

As we are all aware, every worker presently has the right to refuse unsafe work. Management has the responsibility and is accountable to provide safe working conditions in the strictest sense.

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As general contractors and constructors, we are accountable for every employer and every worker on the project site. Because of this, we request the right to be involved in all decisions affecting the project. The OGCA strongly recommends (1) that the right to refuse unsafe work as presently legislated remain; (2) that the unilateral right to stop work by an individual who is not accountable for his actions be excluded; (3) that the decision to stop work must be made by the joint health and safety committee in concert with the constructor.

Our conclusions:

1. The Ontario construction industry has produced a safety record second to none in Canada and equal to the best in the world. The OGCA recognizes that further improvement is not only achievable but mandatory.

2. The OGCA members are the constructors and are committed to health and safety.

3. The construction industry is unique unto itself and cannot be compared to fixed industry. Bill 208 must be industry-specific.

4. Joint health and safety committees should be expanded to projects of six months' duration and 50 or more workers.

5. Trade committees should be excluded from Bill 208.

6. Worker certification creates a weakening of the internal responsibility system. Emphasis must be placed on the education and training of all workers.

7. The unilateral right to stop work by an individual is dangerous and must be excluded from Bill 208. The decision to stop work must be made by the joint health and safety committee in concert with the constructor.

We, the OGCA, thank you for the opportunity to appear before you today to present our views on Bill 208 from the general contractor's point of view. We ask that in your deliberations, following the hearing process, you give serious consideration to our opinions expressed today.

Mr Mackenzie: Mr Tindale, as a number of other construction groups have mentioned, you refer at some length to the Ontario Ministry of Labour and the publication Construction Safety in Ontario and some of the figures relating to the

health and safety record of the construction industry out of that pamphlet. I wonder if you could tell me—the inference is that they are Ministry of Labour figures—whether or not those are Ministry of Labour figures or whether the source is the Construction Safety Association of Ontario.

Mr Tindale: I guess I cannot tell you at first hand, but I can tell you that it is my understanding it is a compilation of information from both parties. Specifically on a specific figure, no, I cannot tell you that.

Mr Mackenzie: I wonder if our research, Mr Chairman, could find out whether or not the figures being quoted are in fact Ministry of Labour or Construction Safety Association of Ontario, because if they are construction safety association then it is obvious that the industry is using industry figures. It is my information that they are and I would like to know if we can doublecheck where those figures come from.

The Chair: These are the figures on page 3?

Mr Mackenzie: In the Ministry of Labour publication, Construction Safety in Ontario, which has been referred to by a number of presenters.

The Chair: Okay.

Mr Mackenzie: I would like to get a better sense also, over and above the new minister's amendments that he has indicated he would like to see in the bill when we get down to clause-by-clause, just what other specific areas you feel have to be changed when you make the argument that while you accept the amendments suggested, they do not go far enough. Are they the additional points that were made in some of the other briefs from the construction associations?

Mr Tindale: Our intent today, Mr Mackenzie, was not to come in with a list of 26 and a half items that we wanted to see changed or altered, or suggested amendments. Our intent today was, by using the three examples that we did, to try to point out that the construction industry is unique and that maybe this committee should give committee should give consideration to the industry-specific request we have asked for.

I do not think we are analogous to fixed industry and I do not think the same regulations would apply to us, item by item. I am not suggesting for one moment that we disagree with the intent of Bill 208 or that it should be discarded and thrown in the basket. We are suggesting that you, as a group, because of this kind of point in trying to explain what the industry is like, please

consider the uniqueness and please consider being very industry-specific.

Mr Mackenzie: But you must recognize that when you make a comment such as you have in your brief and express a deep concern over the fact that the Ministry of Labour's amendments have not gone far enough, you are in fact commenting on the bill. You are making a presentation on this bill that was the subject of some controversy already as a result of those amendments.

You must also recognize when you make that argument that while you are asking for a look at the uniqueness of your industry, your position is not shared at least by the organized section of your industry, because certainly that has not been the position of the building trades that have been before this committee, or the labourers or a number of others that are involved in the construction industry.

Mr Tindale: With all due respect, just the contrary: It is my understanding that our labour counterparts, and the building trades in particular, and other representatives in the construction industry, but I am talking labour specifically, have dwelled on the uniqueness of construction. It is the uniqueness of construction point that we are trying to make this morning.

Mr Mackenzie: They have made a number of points on it, but they certainly have not banned or objected to this bill. As a matter of fact they have been supportive of the legislation, which your organization has not.

Mr Tindale: I think we have supported points within the legislation. I think we have supported the intent of the legislation and we are saying that this morning. I think we are asking you to look at the industry as an industry-specific portion of the legislation.

The Chair: We are almost out of time. Mr Dietsch and Mrs Marland.

Mr Dietsch: In relationship to certified workers, you have some concerns that I am trying to understand. As to an individual who becomes better equipped, with a higher level of training, I guess a semiprofessional, if you will, in relationship to spotting the unsafe conditions in workplaces, I fail to understand where you feel that kind of an individual creates a weakening, which is what you have indicated, in the internal responsibility.

Recognizing, of course, that we are talking about certified workers at this point, it would be my hope and I am sure the hope of many of you as well—perhaps even of you yourself—in terms of

being able to train more people in the workplace, educate them towards their health and safety responsibility as well as being more cautious and more careful carrying out their duties, as being a further step of course. I fail to quite understand where you are coming from in terms of the weakening comment.

Mr Tindale: Let me make a couple of comments and then maybe someone else would like to add to it. We agree wholeheartedly with respect to the additional training, further training for all workers. We in fact think that is where the emphasis should be, on all workers across the board as opposed to a specific group. Let me give you two analogies, if I may.

It is somewhat similar to a child who has just been born and goes through a number of years until it reaches maturity. As long as mother or father are continually there, the internal responsibility system for that child does not develop. It develops through teaching, which is the training and the education, and then all of a sudden, through the process to maturity, the child must become responsible for its own actions. If that protection is still there until the child is 30, there is not very much responsibility developed.

Another analogy might be that as Canadians we probably all have children who have played or are playing hockey. When I played hockey we did not wear helmets and we did not wear face masks. When my child plays hockey today, he wears a helmet and a face mask. In fact he is probably better equipped than King Arthur's soldiers were. Because of that there is a lot more stick work and he feels protected. He feels that he is oblivious to danger and oblivious to being hurt.

That is an exaggeration, I admit, but our concern is that if the worker does not feel he is responsible and must learn and must know, and if he has Big Brother protecting him, then that internal responsibility system vis-à-vis the individual worker is going to break down.

The Chair: I think we should give Mrs Marland a chance for a final question.

Mrs Marland: I do not know whether you heard any of the inspectors' brief before you, Mr Tindale. First of all, let me say that I understand the transient nature, particularly on your kinds of job sites. The difficulty that I have is that yesterday afternoon we had some blatant examples of things that were wrong on the Ellis-Don

site at the domed stadium and they were rectified after a big massive walkoff. They were rectified for three months and then the problems start to recur.

Personally, if we believe that we have enough legislation, which if it was enforced I think maybe I am inclined to think we have, with the right to refuse work, what do you see as the main problem? Obviously there are problems in different locations. We do have legislation. We heard the inspectors talking about the problems as they see them as inspectors. How do you see it? Do you see that we need to have more inspectors and enforce the legislation we have without adding Bill 208 as another layer of bureaucracy?

Mr Tindale: I can give you an opinion on whether Bill 208 is another layer of bureaucracy, but let's not talk about bureaucracy within these walls. Let me simply say that in my opinion the concept of Bill 208—

Mr Dietsch: He knows when he is outnumbered, very astute.

Mr Tindale: My concept of Bill 208 is co-operation between labour and management. That is the whole concept of Bill 208. I think that in the construction industry, which is the largest industry in the province, the largest employer in the province, the largest producer of gross national product in the province, and I mean the largest, we have examples of labour-management co-operation that have been very successful along the way, developed through the Construction Safety Association of Ontario, introduced and put on projects voluntarily by contractors now.

If we put more policemen on the highway with more radar traps, will that stop you from speeding? The answer is probably no. But if you understand what the laws are and you are taught what the laws are and you understand the ramifications of breaking the law in terms of either injury or death or fine, then probably you will slow down on the highway.

The Chair: Mr Tindale, I hate to break in but we are over time and we simply must call this to a halt. On behalf of the committee, I thank you for your presentation this morning. The committee is adjourned until 2 pm.

The committee recessed at 1213.

AFTERNOON SITTING

The committee resumed at 1406 in committee room 1.

The Chair: The standing committee on resources development will come to order as we continue the process of holding public hearings on Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

ONTARIO SECONDARY SCHOOL
TEACHERS' FEDERATION

The Chair: For our first presentation this afternoon we have the Ontario Secondary School Teachers' Federation. I would ask them to come to the table. We welcome you to the committee. The rules are quite straightforward. Each presentation can go on for 30 minutes. You can use all of it in your presentation or you can save some of it for an exchange with members of the committee. If you will introduce yourselves, we can proceed.

Mr Livermore: I am Jim Livermore, executive officer for health and safety. With me are Kim McCulloch, vice-president, Doris St Amant, vice-president, and Rod Albert, our secretariat member attached to the health and safety committee. We also have with us Helen Hughes from Scarborough, one of our committee members, and Larry French, our legislative researcher.

We welcome the opportunity on behalf of the Ontario Secondary School Teachers' Federation to address you with our views on the proposed amendments to the Occupational Health and Safety Act. Some of you will probably wonder why teachers and other educational employees are concerned about health and safety. People have the image that we work in those lovely, little, safe, healthy, red brick buildings. Well, that image is wrong; those buildings are not safe as they once may have been.

I would like to point out to you that while our members do not often experience immediate or imminent danger, they do suffer from the chronic effects of workplace hazards. Effects such as cancer from asbestos exposure or deafness from poorly designed music rooms or shops become evident only after prolonged exposure. Throughout our report, which we have presented to you, you will not find many statistics for worker compensation claims. There is a very good reason for that. In 1988, for example, there were

only approximately 540 claims made by secondary school teachers. But the problem is that most of the teachers use their sick days rather than filing the compensation claims. They do this for various reasons, probably the main one being to avoid the red tape. This practice will likely decrease, especially if employees see their sick-leave accumulation threatened by the proposed no-fault auto insurance bill.

Our biggest concern at the present time deals with indoor air quality in our work sites, most of which have been converted into sealed buildings with inadequate ventilation. The children who go to school in these work sites are exposed for four or eight years, depending upon whether they are in secondary or elementary school, but most teachers or other employees remain in the work site for 30 to 35 years and therefore risk much higher exposures.

Recently there has been a great deal of media coverage and concern about the danger posed by asbestos. Serious problems have been discovered in Hamilton, Peel and Metropolitan Toronto. The Ontario Secondary School Teachers' Federation is very concerned with the amount of asbestos still found within our schools. Often called a silent killer, asbestos health damage is not reversible. Furthermore, there is no safe level of asbestos exposure. The Ontario regulation for industry sets an asbestos exposure standard of one fibre per cubic centimetre of air. This is not designed to be a safe level, and the 1984 report of the royal commission on asbestos reached this standard on the grounds of what it called acceptable risk. A study done by the American National Research Council has shown that schoolchildren exposed to a fraction of the Ontario asbestos standard have noticeably higher risk of illness. Many American unionists call asbestos the most dangerous child molester stalking schools today.

We ask that in the process of its deliberations the committee not only focus on the imminent dangers but take this opportunity to strengthen the Occupational Health and Safety Act in the area of chronic workplace hazards.

Now we would like to take you through the brief, if we can, and highlight a few sections.

On 24 January 1989, the then Minister of Labour, the Honourable Gregory Sorbara, introduced Bill 208. In explaining the need for new directions in workplace health and safety in

Ontario, the minister provided the following rationale:

"The current number and rate of workplace accidents and injuries in Ontario is unacceptable. So too, are the associated costs, both human and economic. If this situation is to be improved in a meaningful way, appropriate measures must be taken. These measures must aim at strengthening the joint responsibility and responsible participation of labour and management in the effective control of workplace risks."

In its original state Bill 208 represented significant progress in the field of health and safety. Therefore, it is with considerable disappointment that OSSTF notes the new minister's proposed amendments to Bill 208. These amendments will result in relatively few gains for most workers and have severely compromised the key issues upon which our federation based its initial support for the bill. OSSTF believes that the health and safety of Ontario's workers is one issue where no compromise should be made.

Originally Bill 208 proposed an expansion of the right to refuse unsafe work to include any activity which workers believed posed a hazard or was dangerous or would violate the terms of the Occupational Health and Safety Act. The minister now proposes to narrowly define "activity" to restrict the right to refuse unsafe work to those activities which represent imminent danger only. Any activities which might represent longer-term hazards or dangers, such as deafness, would be dealt with by joint committees with no regulations to fall back on. How does the minister envision this being a step forward?

We are concerned about the government's intentions to remove the right of the workers' certified members to shut down an unsafe operation where there is an imminent threat. Without the possibility of regular ministry intervention in a good work site, the need for certified workers to be able to act becomes even more compelling. A stop-dangerous-work order essentially involves the saving of a worker's life. Therefore, we strongly oppose the new proposal that such a critical decision be made jointly by both the certified employer member and the employee member. "Imminent" means about to occur at any moment. What advantage is there is waiting? Surely that places the worker in jeopardy. We must not have a situation where employees must wait for agreement when there is an imminent danger or threat.

Obviously, the most significant gain for workers is the right of a certified workers' representative to order a shutdown of a work-

place. However, it is now being proposed that the act be amended by allowing for the cancellation of the direction to stop work by a certified member or by an inspector from the Ministry of Labour. That is, two minutes after the workers' representative has ordered the work stoppage, a certified management representative, who may not even work at the work site, may come along and cancel it. We do not see how this is a step forward.

If worker safety is truly the motivating factor of this legislation, then no stop-work order should be overturned until there is either agreement between labour and management or an inspector has so decided after an investigation of the problem. Management alone should not have the right to decide. In addition, no employee should be requested by management to take on another's job when a refusal to work is in progress. Work must not resume until a problem is resolved to the satisfaction of both labour and management. Currently there is no guarantee of this safeguard in the bill. We recommend that one be provided.

Further, if a certified workers' representative is found to have acted negligently or in bad faith in ordering the shutdown, that person will be decertified for life, without any right of appeal. Thus there will be enormous overt pressure on worker representatives not to order a shutdown if there is any doubt about the decision. Rather than erring on the side of safety, the legislation is deliberately stacked to compel continued work unless the worker and management representatives are in agreement.

Let's now consider the issue of pay under a stop-work order. OSSTF supports the principle that no employee should suffer either monetary loss or loss of benefits as a result of a workplace shutdown. Presently the person actually refusing or stopping work is guaranteed some pay but others who may not be able to work because of that order are not paid. Surely this places undue pressure on those who wish to refuse work not to use their rights. All workers affected by any stop work order or by a worker using the right to refuse unsafe work should be guaranteed pay. Workers should not have the double jeopardy of unsafe work and the possibility of losing wages.

Now I would like to turn it over to vice-president Doris St Amand who will go through sections B and C.

Ms St Amand: Section B deals with our concerns regarding the Workplace Health and Safety Agency. Originally Bill 208 provided for a bipartite agency with full-time co-chairs from

labour and management and, as well, a number of directors equally divided between labour and management. But now the government is proposing to add a third level, that of a full-time neutral chairperson. Despite the fact that this person would be selected by labour and management, this person, in our view, will still represent government, which is a major employer throughout Ontario, and will still be in a position to determine the actual direction taken by the agency. Both this neutral chairperson and the recommendation that a small business advisory committee be established are unacceptable to OSSTF because both recommendations will seriously weaken, in our view, the equal voice in the agency that Bill 208 originally intended. We therefore recommend that the bipartite structure and composition of the agency be maintained as originally proposed.

With regard to subsections 8(5f) and (5g), as set out in section 4 of the bill, OSSTF is seeking an amendment to ensure that workers have the exclusive right to choose which of their committee labour representatives is to be certified.

I would like to turn now to section C, the section that deals with the Workers' Health and Safety Centre and the safety associations. Currently Bill 208 would amend the act to require that the boards of directors of the provincial safety associations and the Workers' Health and Safety Centre reflect a 50-50 composition of management and workforce. OSSTF believes that the unique nature of the workers' occupational health and safety centre is such that it should be preserved as it is currently structured. Therefore, OSSTF supports the Ontario Federation of Labour's recommendation for separate employer and worker centres.

Mr Livermore: Vice-president Kim McCulloch will deal with the last two sections.

1420

Mr McCulloch: On page 11, section D: Bill 208, of course, provides for certification of at least one employee and one employer representative—that is missing here—on the joint health and safety committees. We agree wholeheartedly that both of those representatives receive the same training and adequate, sector-specific training.

However, is it good enough to state that previous training be given due regard in determining training requirements? OSSTF and many other organizations have put an awful lot of energy, time, effort and money into the training of our members in health and safety. At the present time OSSTF has approximately 80

members who have received the 30-hour level 1 training course and another 24 members who have qualified as instructors in the training course. Having done that, we would certainly seek some clarification as to whether or not the previous recognized certification for those people will be maintained. Will they qualify under the new provincial standards? If the answer were no, then I suppose we would have a problem in continuing our training programs and probably a problem in convincing people to get into that.

Over on page 12, section E: To ensure that the recommendations from both labour and management to joint committees are seriously considered, we would request that the employer be obliged to respond in writing to its recommendations within—and these are positive recommendations—10 working days rather than 30 days and then, following that, that the employer be obligated to implement committee recommendations within a reasonably short period of time. We would suggest that 30 days is a reasonable period of time. Those kind of time lines are needed, it is our feeling, if the joint committee recommendations are going to be taken seriously.

In addition, the present wording of subsection 23a(2) of the act, as set out in the bill, allows the certified member discretion in whether or not to investigate a complaint. That discretion is in the present legislation. We believe that all employee complaints must be treated seriously and therefore should be investigated by a certified member. The very first step, in our view, to safe working conditions is the recognition of problems. This would appear to us to be the best way to make sure they are properly recognized.

We are also concerned that regulation 191/84, which governs teachers, permitting the establishment of a single joint health and safety committee for all teachers employed by a school board, be continued. School boards often consist of many work sites, but the present system, in our view, works very well. We would seek clarification, then, on the number of joint health and safety committees required for each school board. If there are to be joint health and safety committees in each work site, that appears to us to be somewhat unworkable. If that is the meaning then—workplace—then the other concern would be the requirement that workers on such committees come from the workplace but that management members have no such requirement, and we would argue in that case that the management directors also come from the workplace.

Mr Livermore: In conclusion, since the Occupational Health and Safety Act came into effect in 1979, we still have the problem of many workers dying on the job in Ontario and thousands, in fact millions, more being injured on the job. This carnage must not be tolerated as the normal price for doing business or, in our case, educating the youngsters in Ontario.

With Bill 208, the government of Ontario has the opportunity to strengthen the present act. As this committee well knows, the present act has not resulted in fewer worker deaths or injuries. The amendments proposed by the Minister of Labour, the Honourable Gerry Phillips, will not reduce the pain, suffering or deaths of workers in this province. Rather than strengthening protection for workers, these amendments will in fact weaken the act to the point of ineffectiveness.

We ask the committee on resources development to avoid the tragic consequences of failing to take advantage of the opportunity provided by Bill 208. We ask the committee to support the recommendations of our federation and return to the initial vision of Bill 208 as tabled in January 1989. We wish you well in your deliberations. Lives of thousands of present and future workers depend upon your decisions.

I would like to read into the record the recommendations, which are on pages 14 and 15:

1. that the original clauses of Bill 208 dealing with increased rights to refuse work and to shut down work activity be maintained;

2. that pay and benefit to all workers affected by work refusal or work stoppage be guaranteed;

3. that an amendment be made which would eliminate the right to cancel a work refusal until the work refusal has been investigated and the problems resolved to the satisfaction of both workers and management certified representatives or a ministry inspector;

4. that both employers and unions or associations have the right to file complaints and appeals with the proposed agency;

5. that the words, "or to cancel a stop work order" be added to subsections 23c(6) and 23c(7) to permit complaints or appeals under recommendation 4;

6. that no worker will be requested or compelled to do work which has been refused by another employee;

7. that the right to refuse work be expanded to include workplace interact with potentially violent individuals;

8. that the bipartite nature of the agency be maintained;

9. that an independent arbitrator become part of a neutral appeal process to examine the final decisions made by the proposed realigned agency;

10. that the government not proceed with the small business advisory subcommittee, unless a corresponding subcommittee be formed for employees of small businesses;

11. that workers or their union have the sole right to select labour representatives to be certified;

12. that the Workers' Health and Safety Centre and health clinics be allowed to maintain labour control of their boards under the revised act without any loss of government financing;

13. that regulation 191/84 be continued;

14. that subsection 23a(2) be amended by changing "may" to "shall."

Thank you again for the opportunity to express our views to you.

The Chair: Thank you. I should know this but I do not: can teachers refuse to work now if they deem it to be unsafe?

Mr Livermore: Yes.

The Chair: You are covered under the existing health and safety legislation.

Mr. Livermore: Yes, by the regulation.

Mr Mackenzie: When we were holding hearings in London—I will not be too specific, because I do not have the brief in front of me—we had, I think, the school board before us, making a presentation almost diametrically opposed to yours, opposing the rights granted under the new safety and health legislation, and claiming at the time that the teachers and a number of other groups of workers were on side with them.

That was subsequently refuted, not directly by the teachers but by other, I think, CUPE delegations who appeared before us that day. I am just wondering if you have any knowledge of that case or if it has been raised to the OSSTF or not, and whether or not there was any validity to the argument of the board in London.

Mr Livermore: No, I have no idea. We have not heard anything from the teachers in London about it.

Mr Mackenzie: They were not before us. This was just a claim of the board.

Mr Livermore: No, the answer would be no, we have not heard anything and we do not believe that the London board was correct in saying that.

The Chair: Thank you very much, Mr Livermore and your colleagues, for your presentation. We appreciate it.

NORANDA INC

The Chair: The next presentation is from Noranda. Gentlemen, we welcome you to the committee this afternoon. We look forward to your comments. For the next 30 minutes we are in your hands.

Mr Pratt: We are here today representing Noranda Inc and the Noranda group of companies in Ontario. My name is Courtney Pratt. I am the senior vice-president of human resources and strategic planning with Noranda. With me are John Keenan, our director of industrial relations and policy; Bruce Hamilton, assistant vice-president, employee relations with Noranda Minerals; Paul Halleran, the manager, health and safety with Canada Wire and Cable; and Russ Lauay, the manager of skills development with Noranda Minerals. On your list it indicated that Keith Fraser from MacMillan Bloedel would be here, but the weather has kept him in Sturgeon Falls.

1430

I will begin by reading the submission and there will be time for some questions if you have some.

Companies in, or associated with, the Noranda Group employ over 12,000 men and women in 25 communities in all parts of Ontario. Noranda products include printing papers, wire and cable, nonferrous and precious metals and building materials, and the company operates industrial and wholesale distribution businesses. Our origins date back to 1920 in New Liskeard and our company was incorporated in Toronto in 1922. Our head office remains here.

Noranda companies have a strong commitment to workplace health and safety and regularly report above average performance compared to others in their Workers' Compensation Board rate groups. Examples of our commitment include the occupational health and safety policy which each operating chief executive officer signs and issues in his unit. A copy of that policy is attached to your document. In addition, every senior executive in this group is a member of our executive committee for accident prevention and regularly participates in teams of three which visit operations in other divisions to meet employees at all levels to assess the effectiveness of local commitment.

Noranda established joint safety committees long before the law mandated them and a Noranda Minerals mine was one of the first plants in Ontario to appoint a full-time worker safety representative, signifying our belief that

workplace health and safety are advanced by mutual co-operation and respect. It is from this perspective that Noranda believes that it can make a positive contribution to the deliberations of this committee.

In analysing successful health and safety programs and those where success has been harder to achieve, we think we have found a common thread. That thread is the recognition that every employee has a responsible part to play in the process. The degree of acceptance of that responsibility depends on a clear understanding of each individual's role, on a commitment to education and training, to the recognition of a common objective and to the provision of the resources necessary to meet those commitments. Noranda believes that health and safety legislation and its administrative and support machinery must be structured to enable those commitments to be met in every Ontario workplace. We believe that this is not now the case. The internal responsibility system is not widely understood or practised and the manipulation of health and safety issues for other purposes remains an obstacle to development of trust and confidence.

Bill 208 sets out, in the words of the minister on 12 October 1989, "to encourage the active, informed and committed exercise of internal responsibility by employees and employers" and "is designed to improve this internal responsibility system...first, by strengthening the employer-employee partnership...second, by ensuring that both employee and employer have the training and education that is necessary to give full effect to their efforts; third, by providing greater authority for the new knowledge and training to be applied in the workplace..."

Noranda supports the broad objectives of the bill and believes that they chart a course which can lead to more constructive and successful management of workplace health and safety in Ontario. Nevertheless, the bill has generated considerable criticism. Since some of this revolves around interpretations of how it will be applied and concerns over how it might affect currently successful programs, we propose to comment on what we believe are significant issues and hope that this will assist you and the government in the development of a law that will work.

The effectiveness of the Workplace Health and Safety Agency will be critical to the success of the new legislative approach. Unfortunately, there is a widely held and negative view of the agency as an intrusive and regulatory body which some sectors fear will set back progress made in

their industries or safety associations. This view conflicts with the minister's mandate that the agency "develop and administer health and safety education, engage in research and consultative services and provide advice to the minister." The bill, however, appears to go well beyond this with its powers of discipline and accreditation—thus the confusion.

Noranda believes that the mandate of the minister is the appropriate one and that the agency must be, and be seen to be, a respected and qualified resource whose emphasis will be on developing strategies and their implementation through the co-ordination of existing resources. In order to accomplish this, the agency will need to draw upon the skills and strengths of all of the existing organizations and specialists from labour, private and public sectors, medicine, the universities, etc. Contribution and results should outweigh concerns about sectoral representation.

If, as we understand, the agency's role is to create synergies and common purpose where there has often been tension and unproductive dispute, then some of its proposed functions may present problems and may be contributing to the disquiet regarding its role. We refer first to the powers of accreditation and their relationship, as proposed by the minister, to the unilateral authority to stop work and, second, to the power of discipline.

The agency's clients are the employees, employers and people of Ontario, and its ability to work constructively with them would be enhanced if the following procedures were to be established.

We recommend that accreditation of workplaces should be based on predetermined performance criteria established by the safety association with reference to the Ministry of Labour and Workers' Compensation Board data. The widespread concern over the stop-work provisions of the bill and the referral of this issue to the committee for further discussion clearly reflects the tensions which have often dissipated energies which might have been more productively used. As in the accreditation process, Noranda is concerned that an effective and credible procedure be developed which will supplement and reinforce the constructive role of the agency and support the collaborative nature and accountability of the joint health and safety committee. In our view, this could best be done by defining the procedure in advance. We believe that those workplaces which meet performance criteria as previously described should need joint employee-employer agreement to stop work unless

both parties agree to a unilateral procedure. However, in the unaccredited, unsatisfactorily performing workplace, a procedure such as the following should apply.

A certified member who has reasonable grounds to believe that either a violation of the act or regulations, or a danger or hazard presents an imminent risk to a worker or other person shall discuss those concerns with the worker, and if they are in agreement the worker shall cease the work in the manner and according to the procedures set out in the act. Where there is no agreement, the certified member may, if he has reasonable grounds to believe that an imminent risk exists, order the work to cease. In all cases, he shall discuss his concerns and recommendation with the manager immediately responsible for the work, with or without the certified member from management present. If there is no agreement to stop the work or continue the cessation, and if the certified member from the management is not present, then the latter will be called to discuss the situation. Should the two certified members fail to agree, an inspector from the ministry shall be called to investigate and render a decision.

Noranda believes that the success of the certified member process will directly relate to their training and recognition as a workplace resource. The constructive use of the authority allowed them should not be represented as an arbitrary power over that workplace and the development of problem-solving skills should be a priority in the training strategies of the agency.

The agency's effectiveness will be severely hampered if it is thrust into a role which is perceived to be adverse in interest to either employees or employers. Such a role is the disciplining of certified members. Abuse of the authority given to a certified member is a violation of the employment relationship and the right to exercise discipline rests with the employer. In the event that a certified member contests such discipline, the following procedure is proposed.

If any complaint or disciplinary action taken against a certified member of a committee is contested and the parties involved are unable to resolve the dispute with the assistance of the agency, it will be referred by the agency upon request of either party to an appropriately qualified neutral body—for example, the office of arbitration—for final resolution.

In preparing this submission, Noranda has been guided by the belief that occupational health and safety is an inappropriate arena for advers-

arial and unco-operative relationships. We are convinced that the combined resources of the ministry and the many organizations presently working independently and sometimes at cross purposes can co-operatively achieve much, particularly if they accept the mandate to encourage the active, informed and committed exercise of internal responsibility by employees and employers.

We believe that successful health and safety programs reflect successful workplace partnerships. Noranda hopes that the whole of this Bill 208 will be examined in the light of what will aid in constructive partnership so that mandatory provisions will not apply where the workplace record and relationship support a recognition of local acceptance and implementation of internal responsibility.

Thank you very much, Mr Chairman, and we would welcome any questions you might have.

1440

The Chair: Thank you, Mr Pratt. On page 5, you are talking about the stop-work provisions. You say that we agreed that those workplaces that meet performance criteria should need joint employee-employer agreement to stop work unless both parties agree to unilateral procedure. Is your word "unless" in there because of the collective bargaining agreements in some places of work, such as Noranda's, perhaps?

Mr Keenan: I think our emphasis here is that in order to encourage a collaborative role from both employees, whether represented by unions or not, and employers, where there is a successful workplace record, that collaboration should be continued and there should not be a unilateral right. So, it is not specifically aimed at unionized workplaces, although you are right. They are within collective agreements that we have and other companies have; provisions that set out the joint agreement for stop-work provision. Our worker representative structure in a number of the company's operations gives that worker representative a unilateral right, and we certainly would not look to change that. Clearly, this recognizes that. But we did not want it just aimed at that. We wish to see that enlarged to all workplaces where the successful relationship exists.

The Chair: Has it not been a problem where it does exist in your workplaces?

Mr Keenan: It has not been a problem, no.

Mr Dietsch: I too was interested in that part of the brief. More particularly, at the top of page 5 you express an accreditation of workplaces. We

have had a number of groups that have recognized that that, of course, in some instances will be a very difficult task and probably arbitrary at the least. It is my view from your brief that you take it as not an insurmountable task and certainly can be drawn up. I guess we have come to know it as a good employer and a bad employer type situation, for lack of better adjectives that can best describe the real workplace. Would you elaborate on that a little more for me?

Mr Pratt: I do not think we have gone so far as to develop the specifics of the criteria. I guess what we are trying to emphasize is the notion that criteria ought to be predetermined as the basis for certifying workplaces. I suspect that the criteria that you would use might vary by industry.

Mr Dietsch: So, it would be an accreditation process that would be zeroed in on, perhaps sector by sector as opposed to being something that would be broad brushed.

Mr Pratt: I suspect you would have to go that way.

Mr Dietsch: Okay. I am not exactly sure how your workplace operates with respect to the stop-work provisions now. Perhaps you can explain to the committee how your particular workplace operates with respect to a hazard that an employee might discover in his or her particular job. What is the normal process?

Mr Pratt: We have a number of different workplaces with different provisions. John, do you want to comment on that?

Mr Keenan: Clearly, under the present act, the individual worker's right to refuse does occur occasionally. The occasions that that has happened within the different industries in which we are involved in Ontario is really quite infrequent. Where it has happened, it happens in accordance with the provisions laid out in the act, that the employee advises his supervisor that he has a concern about an imminent danger to himself because of some operation that he is involved in. Of course, the work stops. He is entitled to not continue the work. The appropriate safety committee people become involved, and they review the nature of the operation and what the problem is and then either recommend corrective action be taken if necessary or perhaps they believe that the concern is misplaced, and that becomes accepted after a discussion or whatever.

We also have a provision within those units that have a worker representative that the worker representative can in fact determine. This again is very, very infrequent. I could not tell you how

many times it has happened, but they are very infrequent, and we have had worker representatives for over seven years at different locations.

Mr Dietsch: Do they have the power to shut down workplaces?

Mr Keenan: They have the authority to stop work in an area.

Mr Dietsch: It is unilateral.

Mr Keenan: Yes. That is set out under the terms of our agreements with our trade unions in the mining operations particularly. Did you want to know specifically how that would work?

Mr Dietsch: No. I am more particularly concerned in relationship to the startup process. We have had many presentations made before us, on behalf of the labour movement in particular, that the process for starting a workplace back up should be a joint participation. I have questioned a few of them in relationship to that and they seem to feel that it would be fairer then to surmise that the shutdown, initially, would be done jointly. I am just trying to draw from your experiences whether that would work or not.

Mr Keenan: Our view of what would work, of course, is what we have expressed here. Where the workplace meets the criteria, which would be established in accordance with the particular industrial sector, there ought to be joint decision-making. Where the workplace partners have shown an inability to meet satisfactory safety criteria, then we are quite supportive of a system such as is practised in some of our mining operations where one individual, qualified and recognized, has the ability to unilaterally order the cessation of an operation. Fundamentally, what we are saying is that that is an inappropriate course of action to take in many, many workplaces where there is a very successful collaborative endeavour.

One of the problems that we have tried to identify and that we feel strongly about is that health and safety is a joint responsibility. You cannot point the finger at a supervisor or at a manager and say, "It is your fault," any more than you can point the finger at a worker and say, "It is your fault."

Where we have been successful—and I think in some of our industrial sectors that we are involved in, we have been very successful, although given the nature and size of the company, we have areas that we recognize have need for improvement and correction. We recognize that need in all areas, but we recognize it more so in some. Nevertheless, where there is a successful joint acceptance of responsibility, we

think it would be a very retrograde step to divide the parties again and say, "You have this authority," and "You have that authority," and create adversarial situations, because it is in those situations where there is an adversarial context that we believe we have the worst record. It is where we have built collaborative, joint effort that we have in fact achieved good records.

The Chair: On page 2 you say the internal responsibility system is not widely understood or practised and the manipulation of health and safety issues for other purposes remains an obstacle to the development of trust and confidence. Is this widespread? Is it just at Noranda, or do you think that goes beyond Noranda?

1450

Mr Pratt: We think it is widespread that the internal responsibility system is not well understood. The issue of the manipulation of health and safety for other purposes is something that we believe is not a big problem for us at Noranda because of the kind of relationships we have developed in the workplace. But what we see when we hear the concerns expressed by at least the employer group about the provisions with respect to stop-work, for example, in Bill 208, I think reflects at least the kind of perceptions of the workplace that that is happening, that health and safety is being used as a tool in labour relations and to achieve other goals. We do not believe that it is a problem within virtually all of our Noranda work sites.

The Chair: Because you said by employer groups, do you mean by that like the Ontario Mining Association?

Mr Pratt: I am not aware of the detailed nature of their submission.

The Chair: I just do not know where that comes from in your brief, this declaration.

Mr Pratt: I guess in the course of the discussion around Bill 208, we are involved with, we talk with other employers, we are involved with a number of employer groups. The OMA would be one of them, but the Canadian Manufacturers' Association is one of them. There are a whole number of groups to which we belong. We talk to a lot of people. It has been an object of a lot of discussion, as all of you know, so I would not target any particular group.

The Chair: So it is not a problem at Noranda. Okay, gentlemen, thank you very much for your presentation.

The members were just distributed the summary of the recommendations prepared by Lorraine Luski. I think it says a lot for the work that Ms

Luski has done. It takes us up to the end of last week. I think that is going to be a big help to the committee when we get to the clause-by-clause stage. Then, of course, Jerry Richmond will be updating it after that. It is going to be a big help to the committee.

Mr Dietsch: He has a tough job to follow.

The Chair: Yes, he does.

Mr Richmond: It will be tight to get everything in. I am holding my breath for next Wednesday.

The Chair: The next presentation is from the Labourers' International Union of North America. I do not think they are here yet. Is that correct?

Mr Kovaks: My name is Jerry Kovaks and I am legal counsel to Local 183 of the labourers. We are awaiting the arrival of our secretary-treasurer and the chairman of our health and safety committee. They should be here momentarily. If you could stand it down for just a few minutes, we expect him to be here.

The Chair: I would ask that the members not leave. Otherwise, it would take us another 10 or 15 minutes to get back together again. We can just recess, have a coffee for a couple of minutes and then proceed.

The committee recessed at 1454.

1456

The Chair: Mr Mackenzie.

Mr Mackenzie: Before they continue, did every member get a copy of the answer to the question I asked this morning on construction safety in Ontario?

The Chair: I think so. I think that was distributed. Yes, Mr Richmond distributed it.

Mr Mackenzie: I would like to draw attention to the fact that the construction industry is widely quoted from in this pamphlet, the inference being Ministry of Labour figures. I am not necessarily saying the figures are wrong, but I want to point out to the people, if they have read the report we got back in answer to the question as to whether they were Ministry of Labour figures or CSAO figures, that in fact the Construction Safety Association of Ontario is cited as the source for 11 tables and the partial source for two others, out of the 20 tables. Most of those deal with, if you look at the original pamphlet we got, the injury and accident record in the construction industry. My point is simply that in at least 13 of the 20 panels, they are not Ministry of Labour figures but construction safety association fig-

ures, and that is the industry, in effect, reporting its own figures.

The Chair: Thank you, Mr Mackenzie, for that clarification. We have with us now the Labourers' International Union of North America. I should point out that they were not late; we were early. So we are not blaming you for the delay. If you gentlemen would introduce yourselves, the next 30 minutes are yours. You can either use it all to present your brief or you can save some time for an exchange with members of the committee. So for the next 30 minutes, we are in your hands.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA

Mr Reilly: I am Michael J. Reilly, secretary-treasurer of the Labourers' International Union, Local 183 in Toronto.

Mr Kovaks: I am Jerry Kovaks, legal counsel to Local 183 of the Labourers' International Union of North America in Toronto.

Mr Reilly: I have provided for you copies of our brief, 25 copies as were requested. I would like to just go over that with you.

Local 183 of the Labourers' International Union of North America is pleased to have this opportunity to address our concerns about Bill 208, An Act to Amend the Occupational Health and Safety Act and the Workers' Compensation Act.

Our local, the largest union local in the construction industry in Ontario, represents over 15,000 workers in many sectors of the construction industry as well as in industrial and service sectors. We take an active interest in the area of occupational health and safety. We firmly believe that workers in Ontario have a basic right to a safe and healthy environment.

This committee has heard submissions from the Council of Ontario Construction Associations, COCA, that there are no problems with health and safety in the construction industry and that new legislation is not required. Nothing could be further from the truth. The construction industry desperately needs stronger and more meaningful legislation. In 1987 alone, fully seven per cent of the construction workers of Ontario, 17,671, suffered a disabling injury. Furthermore, 44 workers were killed on the job. In 1989, in addition to the hundreds who were injured, several members of our local union were killed on the job. You do not have those names in your brief, but I would like to recite them to you.

John Ramos was killed in November 1988, after falling 10 floors from a condominium

construction project. He was assisting an elevator mechanic who was neither licensed nor certified to work on hoist or elevator repairs. All safety features on the hoist had been bypassed. Ramos had no knowledge of this and felt forced to attempt to jump from the hoist.

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In July 1989, Egidio Villa was killed when he and two other workers fell from an improperly engineered scaffold attached to the outside of a condominium building under construction. He left a wife and two children. The other two workers who fell survived with critical injuries.

Most recently, in November 1989, Antonio D'onofrio died of multiple internal injuries after being crushed by a bulldozer. The bulldozer was not equipped with audible backup signals, and further, there was no flagman. Yet five years earlier, after Corrado Minardi was killed after being run over by a dump truck, the coroner's jury made a series of recommendations: (1) that signalmen be employed at all times when vehicular traffic is involved on a construction site; (2) that heavy construction vehicles be equipped with audible backup signals; (3) that the Occupational Health and Safety Act be amended to make these precautions enforceable and to provide harsher penalties, and (4) that more frequent inspections be required.

Obviously, these recommendations have been flagrantly disregarded. Without change to the Occupational Health and Safety Act, workers will continue to die. This is not acceptable. Bill 208 is desperately needed. Reform of the Occupational Health and Safety Act, the first such major reform in at least 10 years, cannot come too soon.

A. Minimum standards in the original version: Bill 208 in its original form was a major step in the right direction. Although it was not the perfect bill, we accepted it as a minimum required to make the Occupational Health and Safety Act meaningful legislation for the construction industry.

When Bill 208 was first introduced on 24 January 1989, Local 183 voiced its support. We gave this support even though we, along with the entire labour movement in Ontario, had reservations about specific sections of Bill 208. These concerns have been adequately voiced by the Ontario Federation of Labour, and we support its submissions. We were and are prepared to support Bill 208 in its original form for the following reasons.

1. The bill provided for a bipartite agency with two full-time co-chairpersons and six part-time

directors from labour and management to direct training requirements and research, with the possibility of an expansion of its mandate.

2. The bill expanded the right to refuse unsafe work by including "activity" which would include such tasks as heavy lifting and repetitive processes. This change is extremely important to our members as they are especially prone to disabilities involving the back, neck, shoulders and knees resulting from heavy lifting, low-level work and repetitive bending and twisting.

3. This bill provided that construction sites with 20 workers or more and lasting over three months had to have a joint health and safety committee. All construction sites should be included, but we are prepared to accept this temporarily.

4. For construction sites with 20 or more workers and at least three months' duration, the bill provided for certified members from labour and management, trained and certified by the bipartite agency, with the ability to stop work which could cause serious and imminent danger.

5. The bill required health and safety representatives on work sites with between 5 and 19 workers.

6. The bill required inspections of part of the work site at least once per month, with the entire site being inspected once a year.

Despite its shortcomings, Bill 208 in its original form constituted a statement from this government that it takes the health and safety of workers in Ontario seriously. We recognized that Bill 208 was a good starting point which could serve to reduce the carnage taking place on our construction sites.

B. The betrayal of workers in the proposed amendments: You have heard COCA argue that Bill 208 in its original form is not needed, that construction sites do not need health and safety committees and that certified worker representatives with the power to stop dangerous work will be destructive. Given the statistics of carnage and death in the construction industry, reform is clearly a priority. While progress has been made in forcing contractors to provide safe work projects, there are still too many who give priority to production and profits.

Workers in Ontario have the individual right to refuse unsafe work, but there are too many obstacles in exercising this right. For a majority of our members at Local 183, who are non-English-speaking immigrants, challenging the employer is not an option, even where their lives are at stake. They are not able to communicate with the employer. Our workplace hazardous

materials information system training program, for example, must offer multilingual education. Furthermore, and most important, they are terrified of being labelled as troublemakers and of losing their jobs.

This is compounded by the fact that in the construction industry the majority of collective agreements either do not have seniority clauses, or if they do, seniority is limited to specific work projects. As most projects have a short duration, a long grievance arbitration process cannot help. The result is that without any real job protection, workers do not challenge the authority of their employers. We can recount endless examples of workers injured on the job in situations where they knew that the job was dangerous, yet were afraid to say or do anything for fear of being laid off or fired.

Now, to our utter anger and outrage, we learn that the Liberal government has bowed to pressure from management. Rather than display courage in protecting the health and safety interests of Ontario workers, it has listened sympathetically to the unfounded hysteria of management groups and introduced changes to the bill which will make it virtually useless. This government is now saying to the citizens of Ontario, to the working people of Ontario, that the financial interests of corporations are more important than the lives of working people. This government is saying that it does not care if workers are maimed or killed on the job. It is saying that it values production and profits over people.

With regard to the revised bill's proposals affecting all classes of workers in Ontario, we endorse the submissions of the Ontario Federation of Labour. For our part, we now address those changes to Bill 208 which say no to protecting the health and safety of construction workers in Ontario.

1. Bipartite agency: As stated earlier, Local 183 welcomes the creation of a bipartite health and safety agency. We do not, however, support the amendment which will require the agency to have a neutral chair from the government. This will undoubtedly undermine the integrity of the agency and the commitment to allow the two major parties in the workplace to work together. The government of Ontario is the largest employer in the province. Its involvement will effectively create a management chair.

Recommendation: There should not be a neutral chair, but rather alternating chairpersons from management and labour.

2. Safety associations: While Bill 208 does provide for labour representatives on the reorganized safety associations, it does not clarify who is to represent Ontario workers. This has opened the door to polluting the labour representation of the boards.

We have already heard the employers' views on the Construction Safety Association of Ontario. They acknowledge that the "CSAO is operated by construction owners for the industry's benefit." Although CSAO is management dominated, it has decided that it knows who should represent labour.

First, it wants fringe organizations such as the Christian Labour Association of Canada, with its minimal constituency of 2,000 members and its proven history of subservience to management. The Provincial Building and Construction Trades Council of Ontario, on the other hand, has 100,000 members. It is quite obvious who represents construction workers in Ontario.

Second, the CSAO has called for the unorganized to be represented. This no doubt reflects management's ability to exercise control over nonunionized workers.

It is clear the Council of Ontario Construction Associations, through the agency of CSAO, wants management pawns representing workers.

In addition, it is crucial that construction workers in Ontario have their own independent construction workers' health and safety centre. The government must respect the distinct concerns of the construction industry. Further, construction workers must be permitted to develop a centre free from management motives.

Recommendations: (i) The labour representatives should be comprised of members of affiliates to the Provincial Building and Construction Trades Council and the Ontario Federation of Labour building trades division; and (ii) the government should ensure the creation of a construction workers' health and safety centre, to be funded from the safety association's operating budgets.

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The right to refuse unsafe work: There are several problems with the government's proposals on this topic. First, the government is now backtracking and drastically restricting the interpretation of "activity" to those presenting "an imminent hazard or threat." While this will still allow work refusals for lifting heavy loads, limiting the right to refuse to "imminent hazard or threat" is a major step backward. Work refusals involving repetitive motion which may cause long-term conditions have been upheld in

Ontario by the Ministry of Labour. Removing this right will hurt our members who become disabled from low-level work and bending and twisting.

Second, Bill 208 guarantees wages to the worker exercising this right only during the first step of a work refusal. Workers should be guaranteed full wages and benefits where the worker has acted in compliance with the act in refusing unsafe work.

Furthermore, the wages and benefits of other workers affected by the work refusal are not protected at all. This acts as a disincentive for workers, since there will be enormous pressure from other workers not to refuse unsafe work.

Third, Bill 208 does nothing to prevent employers from assigning work which has already been refused to other employees. In our situation, lack of seniority rights or English may prevent workers from refusing such work.

Recommendations: (i) The concept of activity should not be restricted to those circumstances where hazard or threat is imminent; (ii) both workers refusing unsafe work and the workers affected by a work refusal should be guaranteed full wages and benefits through all stages of a work stoppage where the refusing worker has acted in compliance with the act; and (iii) employers should be prohibited from reassigning work that has been refused.

Certified members and the ability to stop work: The labour movement hailed this inclusion in Bill 208 as a critical improvement to health and safety legislation. This right is clearly not a threat to management. It simply provides that where a worker is about to be killed or seriously injured, the certified member can stop the work.

This is nothing radical. It is simply based on morality and common sense. If a person is about to be killed or seriously hurt, you do something about it: you stop the work, you prevent the death. That is all it says.

Instead of recognizing that saving lives is the right and moral thing to do, employers reasoned that this is a threat to their ability to run their operations. Tragically, the government gave in and has now made the following changes:

(a) The right will now be contingent on whether the employer is a good or bad employer. Only if the employer is bad can the work representative do something to save a life. If the employer is a good employer, when the certified member learns that a worker is in imminent danger of serious injury or death, he or she must engage in discussion with management.

This is outrageous. First, as the OFL has pointed out, there has been no abuse of this right in other jurisdictions. Second, if the danger is imminent, then there is no time for discussion; the worker will be dead by the time the discussion ends.

Recommendation: The worker certified member should be given the right to stop work whenever there is a serious and imminent danger. The work can only be started again on agreement between the two certified members or by an order of an inspector.

(b) Certified members on construction sites will only be required where there are 50 or more workers and the job site is expected to last at least six months.

This too is outrageous. It excludes 70 to 80 per cent of construction workers. The question must be asked: Does the government of Ontario care if construction workers are seriously injured or killed?

Recommendation: We believe that all construction workers should have the right to access to certified members. At a minimum, the government must retain the original Bill 208 proposal providing for certified members on work sites with 20 or more workers.

(c) A pool of certified members for construction sites: Local 183 is adamantly opposed to the concept of a pool of certified members. Rather, it is crucial that a certified member come from the work site itself. First having members from outside will undermine the internal responsibility system and the trust between the two onsite parties. Second, the certified member, to be effective, must have knowledge and experience with the work which is being done on that site. Furthermore, having the certified member from that site will ensure that he or she comes from a trade that is present on that site.

Recommendation: Certified members should come from the work site for which he or she is responsible.

(d) Bill 208 does not protect the wages and benefits of workers when there is a work stoppage. This places tremendous pressure on the certified member not to stop work, as many other workers will lose wages and benefits.

Recommendation: Workers should not suffer loss of wages or benefits as a result of a work stoppage.

(e) Joint health and safety committees—the definition of employer: Joint health and safety committees are absolutely crucial to ensuring safe workplaces. As stated earlier, there are too many factors which prevent workers from

exercising their rights. Lack of knowledge and information concerning the use of chemicals and/or safe work processes, lack of seniority rights and lack of English are genuine obstacles to safe workplaces. Joint health and safety committees are crucial to eliminating these obstacles.

In Bill 208 the government recognizes the importance of joint health and safety committees. It has required them in work sites with 20 or more workers and which are expected to last at least three months.

It is necessary to ensure that this requirement is not undermined by manipulating the definition of the "employer." Construction work sites do not have just one employer. On every project, there is a general contractor or project manager, who brings in subcontractors, who in turn may bring in other subcontractors. Individually, each subcontractor may have fewer than 20 employees, yet on that project there will be well over 20 workers.

Recommendation: On every site, the employer must be the general contractor or project manager. This will ensure that on a work site of 100 workers, for example, there will be a joint health and safety committee, regardless of the number of companies present.

(f) **Inspections:** Bill 208 provides for inspections once per month for only part of a workplace, provided that the entire work site is inspected once a year.

This is inappropriate for construction work sites. As recognized by the bill, many construction projects last only three to six months. In fact, the vast majority of jobs are finished within one year.

Recommendation: The bill must be amended to ensure that every work site is inspected once a week.

Conclusion: Workers in the construction industry and their representatives in the labour movement have waited a long time for changes to the Occupational Health and Safety Act which offered protection to those who have actually built this province. Our members, like all workers in Ontario, deserve protection. Their families should not have to suffer the tragic loss of a loved one due to a workplace accident which could have been prevented.

Bill 208, in its original form, is a step in the right direction. We do not see it as an end, but rather a beginning for the provision of adequate health and safety protection to construction workers, and all workers in this province. It is the minimum we are prepared to support.

Unfortunately, the proposed amendments to the bill have dampened any belief we have had that this government cares about the health and safety of workers in Ontario. We ask this committee to consider the unnecessary pain and suffering which will continue to plague this province if Bill 208 is weakened. The proposed changes to the bill render it totally useless. We ask you to work with us and to strengthen Bill 208. The workers of Ontario and their families are counting on you. Thank you very much, ladies and gentlemen.

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Mr Mackenzie: Mr Reilly, you may have been one of the last briefs we received and one of the last labour briefs we received, but I am sort of glad that one of the last ones is from the labourers in the construction field, because some of the most vocal critics of the legislation have been the construction companies, such as the Ontario General Contractors' Association, which was on earlier today before you.

Typical of some of the comments made is the following sentence. This was the Niagara Construction Association, which believes that a unilateral stop-work right, as proposed, is unnecessary, damaging, creates potential for manipulation by unscrupulous workers and does not necessarily improve worker safety.

I do not know whether they are afraid of you or whether they really do not want to give up to workers the say in the field of health and safety.

Mr Reilly: I think the last part of your comment is correct. We meet from time to time to discuss health and safety, and it is one thing to talk about it here and it is another thing when it has to be implemented on the job. It is only when tragic accidents happen that we really wake up to the fact of what is necessary in legislation, because employers have to make a dollar and they will cut whatever corner is possible to make it. I am talking in general of the industry.

Mr Mackenzie: One other question that I have, and it is an important one that we have asked a number of people: When the original bill came out, warts and all, because there are changes that I think were needed even in the original bill, there was a general acceptance by labour of that bill. To give him credit, the previous Minister of Labour, Gregory Sorbara, tried to sell it. One of the more famous articles was *Stand By Me*, in one of the health and safety magazines, where he was arguing the merits of this particular piece of legislation.

At the same time that we were being asked to support it and you people were being asked to

endorse it, we had Laurent Thibault, the president of the Canadian Manufacturers' Association, write to the Premier—and send his letter by courier, incidentally, on 2 March 1989 to Premier Peterson—and say, "The CMA is very disappointed that your government decided to introduce Bill 208 without further consultation to try and resolve its major flaws." It goes on to list all of the things that labour wants in the bill that they see as being wrong with the bill, and ends up with what looks to me like almost an implied threat. It says: "I will be calling you early next week to arrange a meeting. I hope that changes to Bill 208 can be made before the groundswell of opposition by our members and others in the business community grows out of control."

Obviously, the Premier responded to him. Every amendment they have moved are ones that were asked for by the CMA.

Do you, as a labour person who was asked, among others, to sell this particular legislation in its original form, feel that you have been either let down or betrayed by these amendments?

Mr Reilly: I think we have been very badly betrayed. We were led to believe, in the committee meetings that took place where labour and management were present with all of the previous Minister of Labour's people around and there was a consensus reached that this bill came out out, we felt it was something that could be worked on that was going to be good for the industry, both sides of the industry.

The people who were there seemed to me to go along in the sense, and then to have the rug pulled out from under, not alone from us but also the minister, was tragic, to say the least.

Mr Dietsch: I appreciate the fact that you have taken the time to come before us and make a presentation to this committee. I have some concern in relationship to some of your comments. On page 7 of your brief, in the clarification of who is going to be sitting on the safety association, you make a comment, "This has opened the door to polluting the labour representation of the boards." What do you mean by that?

Mr Reilly: It is the recommendation that has been made by some people when they raise the issue of who is going to represent the nonunion people in this province. The question you have to ask yourself is, who represented them in the past? The labour movement, in every piece of legislation that went through over the years, the discussions took place between labour and management and the government—unionized labour and management, that is.

Mr Dietsch: Do you think that union members look at health and safety any differently than nonunion members? Is that what you are telling me?

Mr Reilly: No. I did not say that. I am saying that the leaders in the industry have been the unions, the organized industry. You do not find the nonunion people coming before you asking for changes.

Mr Dietsch: Obviously you recognize that there is a large percentage, a number of people who have made those presentations before this committee. I just do not understand how you feel that a person from a nonunionized sector—and I assume that is whom you are referring to—would be polluting labour representation. Those are pretty strong words.

Mr Reilly: Watered down, I guess, the more people you can get on who are not from organized labour. Obviously that is what some of those people want.

Mr Dietsch: I think the more people we can get on who are qualified and talented with respect to health and safety is the important thing. That is the important thing, people who hold an understanding and a wealth of knowledge with respect to health and safety.

Mr Reilly: I certainly agree with you, if you can find them, but I do not see too many of them coming before you suggesting changes that are good for the workers.

Mr Dietsch: Because they have not come before this committee does not mean they are not out there.

Mr Reilly: You would have difficulty finding them, I suggest.

Mr Dietsch: I want to ask you about the next paragraph, in which you say that CSAO "wants fringe organizations such as the Christian Labour Association of Canada with its minimal constituency...and its...subservience to management." do you think the people who are represented by or the leaders of the Christian Labour Association take the issue of health and safety any differently than does anyone else?

Mr Reilly: I have not seen them demonstrate too much in the past about it. It has been left in the hands of management, the safety and health, as far as they are concerned.

Mr Dietsch: But do you think their membership looks at health and safety any differently?

Mr Reilly: No, that is why they are very happy that we speak out on their behalf.

Mr Dietsch: That is not the detection that I take from the paragraph. The detection I take from the paragraph is that you certainly do not want them to be represented on any safety association. That is the interpretation. Am I wrong in that interpretation?

Mr Reilly: You are wrong in the interpretation.

Mr Dietsch: How should it be then?

Mr Reilly: I am saying to you that the people who represent the labour movement, the large numbers in the labour movement, are the ones who should be recognized as far as those committees are concerned.

Mr Dietsch: Let me just further explain to you. The way I understand that paragraph is that you are saying you do not want representation from the Christian Labour Association; you would rather have it from organized labour, as you call it, or bigger organizations.

Mr Reilly: Part of the mainstream of labour in this province, yes.

Mr Dietsch: So you think those people could not handle that issue?

Mr Kovaks: Mr Dietsch, if I may clarify the point we are attempting to make in this section, you will note that we commence that section of the papers with our concern that the CSAO, or at least COCA, in accepting the CSAO's position, is attempting to set the labour agenda for the safety associations. We do not think that COCA or the CSAO is qualified to set the labour agenda or to properly assess what proper labour representation on the safety associations should be.

As an example, we have set out the CLAC example that CSAO itself had put forth. Now, CLAC should not be the primary representative of labour on the safety associations. It is clear that the Provincial Building and Construction Trades Council of Ontario represents the majority of construction trade workers in Ontario. CLAC should not be a primary representative on the safety associations.

The Chair: I am sorry to intervene at this point, Mr Dietsch, but we are basically out of time and Mr Villeneuve had a short question.

Mr Villeneuve: It is a short question. On page 14, the recommendation reads, "The bill must be amended to ensure that every work site is inspected once a week." Could you clarify that, please? That seems to be a lot of inspection.

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Mr Reilly: Usually, under the safety and health act, where the fellow would be certified he

would be able to go through and have a look at the work site every week. Where they are still working on the job, they should have enough time to be able to take a look at it to see that everything is in order.

Mr Villeneuve: Would that not be an ongoing responsibility of his?

Mr Reilly: It should be, but here you have two. You have one from management and one from labour, and they should be able to go around and make sure that everything is the way it should be. It is not a serious problem, but they have done it in the past.

The Chair: Mr Reilly and Mr Kovaks, thank you very much for your presentation to the committee and for your exchange with members.

DUFFERIN-PEEL ROMAN CATHOLIC SEPARATE SCHOOL BOARD

The Chair: The next presentation is from the Dufferin-Peel Roman Catholic Separate School Board and its common jurisdiction committee. Gentlemen, we welcome you to the committee this afternoon. We look forward to your brief. If you will introduce yourselves, for the next 30 minutes we are in your hands.

Mr LaChaine: My name is Roger LaChaine. I will be the spokesperson for the committee.

Mr McInerney: My name is Bill McInerney and I am the associate director of support services with the Dufferin-Peel Roman Catholic Separate School Board.

Mr Blazejewicz: I am Richard Blazejewicz, the safety officer for the school board.

Mr Melito: I am John Melito, the superintendent of business affairs for the school board.

Mr LaChaine: Thank you, Mr Chairman, and members of the committee for giving us this opportunity to speak on this issue. As indicated in our brief, we do appreciate the opportunity to present our view on this vital piece of legislation to the standing committee.

We want to reiterate that this presentation is made on behalf of the common jurisdiction committee of our board. Given the time line that was available to us, the board was unable to view the complete brief. However, the common jurisdiction committee is fully representative of the whole board and we feel confident that if the board had had the time to consider it before the presentation, it would have been in favour of all the recommendations contained in it.

As we indicate in our brief, the board is very concerned about the occupational health and safety of its employees and the protection of its

students. However, as with any piece of proposed legislation that we do not feel wholly recognizes the unique nature of the educational workplace, we feel that it is necessary to comment on those aspects of the proposed amendments to the act which we believe interfere with our primary mandate, education.

As you note in our brief, the Dufferin-Peel Roman Catholic Separate School Board is an extremely large employer in the region of Peel and the county of Dufferin. It is also a rapidly growing employer. The board is currently having very difficult financial times because of increasing demands on its budget and decreasing ability to raise the necessary funds to cover all the demands that are placed on the board, both educational and those which are not strictly educational.

As we indicated in our brief, we are in agreement with the need to amend the Occupational Health and Safety Act to bring it more in line with the present reality. At the same time as giving general support, we wish to indicate concern about specific parts of this proposed amendment.

Improved participation: We do fundamentally believe in participation of our employees in consultation around a wide range of issues. Besides that kind of constant consultation on such issues, we find too that, through the Education Act and regulations, there are a number of checks and balances in place to protect the health and safety of our employees and our students. We believe that the new requirements would unnecessarily increase the number of health and safety representatives who would have to be elected. We also believe that it is unnecessary in an educational institution, which is of a nonindustrial nature.

Under the proposed change the number of joint health and safety committees would increase dramatically in our board because of the number of schools where there are 50 or more employees. Besides the number of employees required for these committees, the training program which would have to be offered would, in many cases, necessitate excusing people from working in the classroom to receive the training, at considerable cost to the board. In this time and age where a shortage of teachers affects all boards, especially growing boards, we believe that the present requirement of one health and safety committee for the whole board would be sufficient to meet the needs of this bill.

As indicated in our brief, we strongly believe that the College, University and School Safety

Council of Ontario should become a sector-specific safety association so that the educational community will be fully represented. We also believe such an association would be able to meet the specific sectoral needs of education as well as providing direct representation to the Ministry of Labour and the Workers' Compensation Board.

Sector-specific regulations for educational institutions: We support the requirement that the employer prepare a review, at least annually, a written occupational health and safety policy and also develop and maintain a program to implement this policy. In doing so, however, we wish to indicate that there needs to be a recognition of the reasonableness of providing the regulations to accompany these amendments which are specific to education. We do not believe that the industrial establishment regulations which are currently being applied to school situations are appropriate.

The costs of implementing this legislation are considerable and the costs are of great concern to us in education. The considerable costs will be incurred in the area of productive staff and the development of policy and planning as well as the review of them. The greatest costs will come in training of the considerable number of employees who will be required for membership in the joint health and safety committees. We see no indication in the amendment that there will be any assistance with these extensive costs.

Since we do not do business in the normal sense of the word we do not see this as a normal cost of doing business in the same way that a company operating for profit in the province of Ontario would and should do. We do not believe that the efficiency we can effect through this legislation will enable us to recover these increasing costs except by increasing the costs of the local taxpayer or receiving increased grants from the province. Therefore, we submit that funding should be available to us to offset the costs of implementing the requirements of Bill 208.

We are very concerned in the educational environment about the implication of the right to stop work as outlined in the proposed amendment. We do believe that the Education Act and regulations cover action to be taken in emergency situations when these occur. We are obviously concerned that the situation could develop where a certified member exercises his or her right to stop work in a school. Work in a school is teaching and supervising children. We have great concern as to what we would do with those children if the workers were not to do their

normal work, teaching. Therefore, we recommend that school-board-specific regulations regarding the right to stop work be carefully developed to take into account the unique nature of the school setting.

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For the record, I would like to read our recommendations.

Recommendation 1: That all schools and land under the jurisdiction of a school board continue to be considered as one workplace.

Recommendation 2: That the Occupational Health and Safety Act require that each school board have a minimum of one joint health and safety committee and that suitable members of this committee be certified and on call to review a work stoppage situation.

Recommendation 3: That the College, University and School Safety Council of Ontario, known as CUSSCO, be approved as a full safety association serving educational institutions in Ontario.

Recommendation 4: That a process be initiated to establish a separate regulation specific to educational institutions.

Recommendation 5: That funding be provided to school boards to offset the costs of implementing the requirements of Bill 208.

Recommendation 6: That school-board-specific regulations regarding the right to stop work be carefully developed to take into account the unique nature of the school setting.

As a conclusion, once again we wish to express our thanks and appreciation for the opportunity to make our views known to this committee. We hope that you will receive these comments in the spirit in which they were given. This is in the spirit of continuing to improve these amendments to make them more workable in the educational setting.

Mr Carrothers: I want to go back. I am having some difficulty understanding your points around the costs of the various committees. You said on page 3 that you are not an industrial activity, which is obviously the case. But one of the gaps in the present occupational health and safety legislation, to my mind, has been the fact that office and other types of environments have been excluded from it, and many of the difficulties we face or seem to be facing relate to those types of environments. With this legislation now expanding to them, I thought it was a plus.

Given the fact that you are not an industrial activity, such that obviously you do not have

great lots of machinery, except perhaps in certain classrooms because obviously you have shops and so on, but by and large it is a fairly straightforward workplace, it would seem to me that the committees, the training and what not would be fairly straightforward. I am therefore surprised that you feel it would be so expensive. Perhaps you could elaborate on that a bit for me.

Mr Melito: What you have said is correct. The point we were attempting to make is that under our current system, of one joint health and safety committee, all the employees of the boards, both teaching and nonteaching, unionized and non-unionized, are represented on that committee.

Mr Carrothers: That committee is board-wide?

Mr Melito: That is correct.

Mr Carrothers: How many schools are in your board?

Mr Melito: In our case, we have some 92 schools.

Mr Carrothers: So that is one committee covering 92 work sites.

Mr Melito: That covers the representatives of all our employees. That is right.

Mr Carrothers: How big is that committee?

Mr Melito: The committee is comprised of some 12 to 15 employees.

Mr Carrothers: How often would it meet?

Mr Melito: The committee now meets every other month. Our concern is that by the definition, using the industrial workplace, we would end up with some 30 or 40 committees and the costs incurred in maintaining those.

Mr Carrothers: That is true, but if I am not mistaken, each school tends to operate relatively independently. The principal has a fair degree of autonomy and that sort of thing in each school. It would seem appropriate that within each of those units some sort of mechanism exist so that matters can be discussed.

I go back to the point that there obviously are not going to be many, they are not going to be serious because you are not dealing with, with the exception of your shops, I guess, tremendously difficult pieces of equipment. I guess I am still not quite understanding why it would be such a problem to have those meetings. I would think that they would probably be fairly perfunctory but would at least provide that meeting mechanism.

Mr Melito: I should add that while the schools do act independently in some areas, there is a very strong community of interest that makes the

schools identical. I should also add that while we have the joint committee, we do have a safety representative in each school. One of the concerns, because of the size of some of our schools, is that we would end up with, as I have said earlier, committees of the teaching and committees of the nonteaching. Although the schools do have a certain amount of autonomy under the principal, the conditions and the operating procedures and the regulations in the acts are very consistent. That is why we feel that one joint committee can in fact represent all the schools.

Mr McInerney: If I might too, it is our understanding, and we stand to be corrected, that there would be a fairly heavy training component no matter how simple the workplace is. An elementary school without the machinery and so on would under the present regulations, we understand, require a fairly heavy training component of those people who would have to be trained. Then we would have to take them out of class and their main job, of course, is teaching children. We cannot get teachers, never mind supply teachers.

Mr Carrothers: I think not. Again, if my understanding is correct, the workplace safety agency is going to be talking about what it takes to be certified and it would likely be that each kind of workplace would have a different certification. It is fairly obvious that somebody who is a certified worker in a petrochemical plant is probably going to have to have a fair degree of training to understand some of the things going on there. Your workplace, on the other hand, would not necessarily have to have that. That being said, though, you have science laboratories, shops of various kinds, chemicals and things, if I remember high school—I think I got up to a little bit of mischief with some of the stuff that was within a school—some of which can produce problems.

As I said at the start, one of the difficulties I have seen is that workplaces, even such as this one we are in right now, tend to not be thought of as having dangers because we get so wrapped up in the big machinery that a plant has. Yet there are many hazards with cleaning chemicals and other things, photocopy machines, all kinds of small things which, when added together, produce some hazards.

Not that you are immediately going to lose a life or limb but there are health hazards over a long term that we need to address, and part of the idea of this is to get at that and provide a vehicle so that these things should be brought up

relatively easily within the workplace within the administrative unit and dealt with in a fairly easy manner.

You raised a point, which I am certainly going to look into, as to how much the certified training would be required, but I would have thought that a certified worker in your circumstance would not require too much work or too much training.

Mr Melito: We would be happy if that were the case.

Mr Carrothers: Obviously you have the labs and things which might change it, but by and large not; just as in a normal office environment, there is not that much there. On the other hand, we need some way to focus on those things because we have ventilation problems, as I said, photocopiers—

Mr Mackenzie: Mr Chairman, can you shorten the question a bit? There are four people.

Mr Carrothers: Sorry about that. I am running on here. Thank you for the point because that is something to look into.

Mr McInerney: We would be very happy if that were true. As long as there are sector-specific requirements around training and so forth for education, great. But we understand at the moment that we are really under the industrial model and if that remains so, the costs would be horrendous, with no return.

Mr Carrothers: I take your point, but I do not think that is so.

Mrs Marland: I think the point that Mr Melito was making, Mr Carrothers, was also that they have two panels that are very different too. Why paint both panels with the same brush and then, in turn, put them under the major umbrella that puts them in the same category as Ford or somebody else?

Mr Carrothers: Workplaces are workplaces, wherever they exist.

Mrs Marland: Rather than debate with my colleague, I want first of all to congratulate the Dufferin-Peel Roman Catholic Separate School Board for being here this afternoon. I know it has meant a special amount of effort on the part of both the board and the staff, and I congratulate you for a very thorough presentation.

Particularly I want to focus on recommendation 5, which was also made this morning by the school boards' association and the Metropolitan Toronto School Board. Obviously, there is an identification here to recognizing that when government passes legislation, somebody has to pay for it. I am not suggesting that workers pay for it with their lives as an alternative to this

legislation. I want to put that right out on the table because I know that the Dufferin-Peel separate school board does not feel that way either.

However, where legislation does have a cost of implementation—and you have just gone through the employer health tax, I would suggest—you do not have any choice unless you get the funding from the provincial government through an increase in your transfer payments. You do not have any choice but to collect that money off the backs of the taxpayers through their property taxes.

My question is, and I suppose it might be just a little unfair, have you had time to develop any ballpark figures as to what the implementation of Bill 208 might cost the Dufferin-Peel board? It does not matter if you have not.

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Mr Melito: To answer that question quickly, because of the time and the various recommendations, no.

Mrs Marland: No, you have not had time. I will let the other people ask their questions then. Thank you.

Mr Villeneuve: I guess this is a follow-up. Recommendation 4 says “separate regulation.” At least you are requesting separate regulation be specific to educational institutions. Do your employees presently have the ability, if they perceive a danger within the workplace, to shut it down?

Mr McInerney: Yes.

Mr Villeneuve: Okay. They can shut down. So, effectively, they now have a lot of the power that this is furthering within Bill 208. Taking into consideration the fact that there will be additional costs which do not apparently receive commensurate funding to support—you have to go back to your taxpayers—I would certainly strongly recommend that this committee look with seriousness at your recommendation, and I believe it has come from other boards, that we may be burdening you with additional costs and not a great deal of additional safety for your employees. I believe that is the message you are conveying.

Mr Melito: The point that we have made in the brief is over and above the recommendations of this bill, the school boards have already legislated through the Education Act and other regulations. The point that we have made is we are regulated through safety issues in a number of other ways that would kick in even before this bill would.

Mr Villeneuve: With some of the decisions on pay equity that have come forth in the rather recent past, I do not blame you for being nervous, and I thank you for making your presentation.

Mr McInerney: I would just like to reiterate what Mrs Marland said. We would not want to give any impression at all that, if there are requirements that are not currently being addressed for the health and safety of people in an educational workplace, we would want to do those and we would have to see the costs however we would do that.

But if it is possible to see to the safety of our employees and our students in ways that do not put great additional burdens because of the recent things that have come down and the costs that are being associated with a lot of these other initiatives that were referred to, we would appreciate that kind of consideration. That is mainly what we are saying: not, “Don’t do it,” just, “Please have a mind to what it is doing to our tax base and to the moneys that we hope to spend on educating children.”

Mr Dietsch: An earlier presentation that was before us today by the Ontario Secondary School Teachers’ Federation left the committee, or at least me anyway, with the impression that there were in fact a number of areas that were within the bounds of the school itself that the federation had some current concern about regarding safety.

When you are talking about the moneys part, are you talking about training or are you talking about the aspect with regard to, if work refusals are to be stopped, the moneys that are, I guess, owed as a result of those work stoppages? You are not talking about that area. You are talking about training specifically?

Mr McInerney: Yes. We do not see that we would not pay our employees if a work stoppage occurred. That had not occurred to us.

Mr Dietsch: Okay. In relationship to your brief, you mention the right to stop on page 8, and then in the last paragraph, you make reference to the work as teaching and supervising children, which we are all well aware of, some of whom are very young and unable to fend for themselves, which we are very well aware of. But then you make reference to what happens to these youngsters if no one is available. Are you anticipating that a teacher would shut down a workplace and just leave those children? That is what I am drawing from that paragraph. Am I right?

Mr McInerney: The right to stop work, unless I interpret it differently, seems to me to

say that if somebody who has the right says it is unsafe until it has either been corrected or found to be an incorrect assumption, people could stop work, and their work is looking after children. What do they do? We do not know.

All we are saying is please make sure that when you write in the right to stop work, you take into consideration that children have to be looked after by their teachers and by their administrators, that they just cannot walk away. I do not think most teachers would, but if you do not write it carefully, we could be in a situation where the last state is worse than the first.

Mr Dietsch: I quite agree with you, I do not think that many teachers would, at least certainly not the ones I am aware of.

Mr McInerney: No, we would not expect it to happen, but the odd time—

Mr Dietsch: You are anticipating that some of those teachers may in fact do that sort of thing.

Mr Melito: I think, if I may, it is not so much anticipating. It is that that item is not addressed, and we are merely cautioning that it be a concern. Also, taken with our earlier comments that the nature of emergencies within a school system would, first, be rare, and if not, would be covered by other legislation and acts, we all have the concerns of the student in mind as well as our employees.

The Vice-Chair: I just have one quick question. It disturbed me in the dialogue that went on between the other members and yourself. I do not think anybody disagrees with the funding problems that some of the school boards have, but surely your case is not also being made that the funding should necessarily take priority over actual health and safety conditions in your operation?

Mr McInerney: As I said, we are not saying, "Don't." We are not even saying, "Don't, if you won't pay us for it." We are simply saying, please be sure that you don't put unnecessary burdens of a financial nature, through training requirements, etc, that will put another large burden on the taxpayers and the board at a time when funds are dwindling. Be aware and be sensitive to balancing those two needs, because we are a public institution with the need to be fiscally responsible to our ratepayers and we just want you to be aware of our concern.

The Vice-Chair: Thank you very much. We appreciate your presentation.

CANADIAN UNION OF PUBLIC EMPLOYEES, HEALTH CARE WORKERS CO-ORDINATING COMMITTEE ONTARIO COUNCIL OF HOSPITAL UNIONS

The Vice-Chair: I believe we are down to the last presentation of the day, the Canadian Union of Public Employees' hospital council. Bruce Land, if you would take the opportunity to introduce the people who are with you, you know the rules, I guess. You have 30 minutes to make a presentation, or make a presentation and leave time for questions, or whatever you decide. It is in your hands.

Mr Land: My name is Bruce Land. I am the provincial co-ordinator for health care workers in the province of Ontario who are organized by the Canadian Union of Public Employees. Bob Waddell is the elected president of the Ontario Council of Hospital Unions. Charlene Avon is a member of our health care workers' co-ordinating committee, the committee that co-ordinates the activities of all the health care workers in the province. Marcel LeBel is our health and safety representative on the Ontario Council of Hospital Unions.

As I am sure you aware, there are 100,000 or more health care workers in the province who are members of various unions or associations, and our union represents over one third of those employees in over 250 hospitals, homes for the aged, nursing homes and other health care institutions.

We are making this presentation on their behalf. Unlike many of the other submissions that you receive from CUPE's national or provincial organizations, or the federations of labour and the nonhealth care sector unions, ours will be somewhat different because we are facing a unique problem. We do, though, support the recommendations of our parent bodies and we urge this committee to support those recommendations.

Health care workers provide one of the most important essential services to the communities of this province, but unlike most other Ontario workers, they are not provided with the same type of protection under the Occupational Health and Safety Act, mainly because of their unique working conditions.

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Many nursing home owners and homes for the aged, when dealing with our union, have attempted to foster the impression that their institutions are old folks' homes that provide limited custodial care to relatively ambulatory

and healthy senior citizens and have actually attempted to compare themselves to sort of geriatric Holiday Inns.

They have argued also that when we are dealing with them at the bargaining table, homes employees should be compared to those who work in the hotel industry. Nothing could be further from the truth, as many of you will recall from the debates in this Legislature that culminated in changes to the Nursing Homes Act and the bill of rights for nursing home residents.

Workers in these institutions are forced to deal with myriad problems from elderly patients who are often angry, confused, violent, overmedicated, suffering from various physical disabilities associated with ageing and who suffer mental diseases and disorders. Workers are often hit, bitten, grabbed, scratched, attacked with weapons or sexually assaulted. They receive verbal abuse, threats of physical violence, sexual advances and other types of harassment.

We now provide just a small number of examples of these types of incidents.

In a Windsor home, a six-foot-four ex-boxer held an aide by the head and started pounding her head into the wall, and the only thing that saved her life is the fact that another worker accidentally came along and walked into the room.

Another union member was grabbed by a disturbed patient and hung by her ankles out of the fourth floor of the nursing home, and again it was luck, because she had been working alone, that somebody came in and distracted that person.

A patient grabbed an aide by the hair and began violently jerking her head from side to side. The patient had to be forced to let go. The aide was treated for hair loss, scalp injuries, whiplash and back injuries. She was unable to continue work, was placed on Workers' Compensation Board benefits, and in this particular case the employer fired the employee for so-called violence to the patient instead of dealing with the problem the other way around.

In one Golden Horseshoe home for the aged, 24 per cent of the nursing staff suffered injury through a violent patient over a 21-month period.

These are just a few examples. We could literally go on for days and days giving you examples of injuries sustained through patient violence or other events in nursing homes and homes for the aged. I am sure many of you have read or seen reports on the many deaths that have occurred in recent years in nursing homes or homes for the aged caused by food poisoning, fires, patient wandering and heat exhaustion.

This is indeed tragic, especially in light of the fact that many of these types of occurrences can be prevented.

One of the things that is overlooked is the toll to the health care worker who takes care of and cares for the patients when such events happen, and these are just, as I say, a very few dangerous examples. Unfortunately, these situations are not confined to the home setting alone. Most of the same types of problems are mirrored in our chronic care hospitals, psychiatric facilities, drug and alcohol abuse treatment centres and emergency wards, just to name a few.

For example, in one St Catharines area hospital, 80 per cent of the nursing staff suffered injuries caused by patient violence during a 21-month period. There have also been outbreaks of food poisoning, fires, patient wandering and heat exhaustion. These, coupled with the hundreds of other dangers hospital workers face in the overall hospital setting, are enormous.

Hospital workers are exposed on a day-to-day basis to a huge number of hazardous materials: biological waste, chemicals, gases, contagious diseases, radioactive materials, used needles and drug containers. For example, the North Bay Civic Hospital, which is a 200-bed hospital, has listed some 2,500 chemicals, gases and other materials that employees handle in the performance of their duties.

Many of these facilities that we have mentioned are environmentally unsafe. They do not have adequate air-conditioning or ventilation systems. Their ventilation systems often do not replace the air with outside air which is free of contamination.

Laundry and dietary personnel often perform their duties in extremely hot working environments and it is not uncommon for them to be overcome with heat, especially during heat waves in the summer.

These are just a very few examples, as we said, of the problems that face health care workers in Ontario. What makes these problems more acute is that despite public assurances from the previous government and a public commitment by this government, health care workers have no regulations to the act which would cover their specific needs and their specific working conditions.

This is in spite of the fact that a comprehensive set has been developed and is languishing in the Minister of Labour's office. We have attached a copy of the regulations for your perusal and we contend that they fully support our position that

without proper regulations, homes, hospitals can be very dangerous places indeed to work.

We also believe it is an employee's fundamental right to know the potential risks involved in the handling of dangerous materials, equipment, procedures or other areas in the delivery of health care in this province. The document attached provides these types of rights to workers.

Health care workers are placed in an additional precarious position for, unlike most other Ontario workers, they do not have the right to refuse in many situations. These regulations also provide methods for dealing with such situations.

In 1978 the Ontario Occupational Health and Safety Act was made public. Health care workers who were previously not covered by health and safety laws were included in this proposed legislation. The Ontario Hospital Association vigorously opposed the legislation. They particularly objected to having health care workers covered by this law. They claimed that the health care sector was not a hazardous industry and that there were already rules in place that, while they were not binding on employers, did provide guidelines to protect workers.

Unions representing health care workers formed a coalition, we had a campaign and we prepared a comprehensive inventory of workplace hazards. We forwarded these findings to the then government. It convinced them to give health care workers protection under the act. We have listed for your information those unions that are involved in the coalition.

The coalition also raised the issue of specific regulations for the health care sector. A comprehensive draft set of those regulations was prepared by the coalition in 1979 and sent on to the government. For three years the proposed regulations were ignored in spite of the fact that many, many health and safety issues were raised in the Legislature.

The coalition took every opportunity to lobby the minister, but the only response it got was that the ministry was in the development stage of preparing regulations and that in the meantime we were covered by the industrial sector regulations.

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In practice, however, the industrial regulations fall far short in addressing the many hazards that are peculiar to the health care sector. Ministry of Labour inspectors found that they are unable to write orders based on those regulations because they were not legally adopted for the health care sector and would therefore be thrown out of court if challenged.

Over the next four years the coalition continued to press for regulations, and in 1983 the coalition increased its efforts through letter-writing campaigns, demonstrations, etc. Finally, in 1984 the minister presented a set of draft regulations for comments. Unfortunately we found that they were only a rehash of the industrial regulations and that very little effort had been put into addressing hazards that are specific to the health care sector.

Biological waste hazards, for example, were covered by a short paragraph while on the other hand self-activating explosive devices had six pages devoted to their control. I guess that is okay if you want to blow up a hospital safely, but that is not the intent of the regulations.

Very little was mentioned on the handling of drugs, sharps, communicable disease control, patient violence or a host of other health care issues. We were outraged and felt that the Ministry of Labour officials had no understanding of the needs or the health and safety problems in this sector. We called for a joint labour-management committee to be established that would jointly develop a set of regulations.

Throughout 1984 we continued to campaign and ultimately convinced the minister of the necessity of establishing a joint labour-management committee to draft a set of regulations. We were able to persuade them that it made more sense to have the regulations developed by the employer group that managed the institutions and the unions that represented the employees, rather than by the bureaucrats.

The committee began its work in 1984 and was made up of the list of bodies that you see on page 9 and included two representatives of the OHA. During their first few meetings, a number of principles were agreed to by all parties: that the committee was charged with the task of developing a set of comprehensive health and safety regulations; that any consensus arrived at by the joint committee would be sent to the minister with a recommendation to enact the agreement into regulations; and that if they failed to reach consensus, both parties' positions on the issue would be forwarded to the minister.

The committee went through a number of meetings at which there was disagreement between labour and management over whether the regulations should be general in nature or specific. The OHA representatives at that time wished to see statements of general intent rather than detailed language. As discussions continued, both parties realized that they would need to have more detailed regulations developed and at

this point the OHA replaced its main representative with the director of the occupational health and safety branch.

Over the next couple of years meetings were held, and the group was able, through hard work, to reach consensus to a series of compromises. A set of draft regulations was produced and agreed to by all parties including the two representatives of the OHA.

In July 1987 the draft regulations were distributed for public comment by the minister. A deadline for response was set for September. In November 1987, the joint committee received a compendium of the responses and a meeting was arranged to review those responses.

In January 1988 the committee met. The main representative of the OHA was not present, but was replaced by a lawyer who proceeded to inform the committee that she had responses that were sent to her by OHA members and that she wished to have those received and considered by the committee. The committee had not previously received those responses and it was well past the deadline for receiving responses.

At this meeting the OHA lawyer proceeded to challenge everything that had been agreed to, but the committee considered all the arguments and forwarded the document, with just a few minor changes, to the minister with the recommendation that they be enacted.

We heard nothing more for a period of time, and then the director of the industrial safety branch of the Ministry of Labour announced that the draft regulations would not be passed in their present form. The ministry informed the committee that, because of the opposition of the OHA, the proposed regulations had not been put into effect. Instead, the sections of the proposals that had other-sector implications would be referred to the industrial regulation committee, but that committee had not even been set up at that point in time.

The sections that were forwarded to that committee were in five areas, and they included lifting of patients; lifting of disturbed-behaviour patients; handling of drugs; handling of infectious agents and materials; prevention of contamination of food and drink with drugs and biological specimens.

The labour-management coalition was asked to begin discussions on those five areas all over again. But when we questioned the OHA, it stated that it had no intention of agreeing to any specific regulations even in those five areas. They again went back to their original position of

10 years ago, that there were sufficient guidelines available now.

So we were back to square one with a complete set of regulations languishing in the minister's office. Again during this same period of time a subcommittee was struck, and that subcommittee's mandate was to develop guidelines as to the structure of the workplace health and safety committees. Again, after many meetings and many compromises, the committee was able to draft up guidelines that would be used universally across the province in all health care institutions. They were forwarded to each parent body for ratification, and we later learned that every group endorsed them except the OHA. Again, we have attached a copy of those guidelines and the names of those people who were involved in the discussions.

So, after 10 frustrating years, Ontario health care sector workers are still without adequate health and safety protection. Many hospitals and homes still do not have bona fide health and safety committees, and while governments encourage labour and management to work together in a spirit of co-operation in dealings with these kinds of issues, the OHA has made a mockery of such efforts, and successive ministers of labour have allowed the agreed-to regulations to remain in limbo while thousands of health care workers are injured on the job each year.

That cost is very high. We obtained a copy of all the compensation claims for health care workers in Ontario for the year 1987. For that year alone there were 5,848 claims filed resulting in 257,446 workdays lost, and the price tag of that is \$40.5 million. Of course these are only the reported claims. We have found that many employers have been encouraging and continue to encourage injured employees not to file claims, and to take paid leave in order to keep their Workers' Compensation Board costs down.

Many health care employers have fought and are fighting the establishment of legitimate health and safety committees and are prepared to spend thousands of dollars in legal fees. Health care unions are forced to ask the Ministry of Health, health and safety branch, to step in at the local facility and to try to work out a structure for committees. In some cases that takes over a year and a half to accomplish, but then, once the committees are in place, there are no regulations to provide adequate guidelines to those types of committees.

One hospital, the Toronto General Hospital, in its determination to make a mockery of the law,

challenged the ministry's right to issue an order through the health and safety branch all the way to the Supreme Court. They lost, and their legal fees alone were some \$36,000.

Quite frankly, our members come to this hearing sceptically. Some feel, because of our past experiences, that meetings like this are an act of futility. We feel that the nonaction of this government has shown its lack of commitment to the wellbeing of health care workers, and we hope to be proven wrong.

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We ask that this committee endorse the recommendations made by the Ontario Federation of Labour and CUPE's national and provincial organizations to Bill 208. But we also ask that you use your influence in the Legislature and with the minister to put the regulations into effect. Health care workers need a health and safety bill of rights. That is our presentation.

Mr Mackenzie: The regulations that you fought so long and hard for in the health field; I am wondering if the feeling there is not almost the same as the feeling that has been expressed by organized labour generally, that somehow or other you got euchred and got betrayed in the course of the process. Do your workers feel that they have been let down?

Mr Land: There is no question about it. We toured the province and held seven separate meetings of health care workers in seven different locations across the province and explained the situation to them. And they do feel betrayed; they feel let down; they feel inadequately protected; they feel frustrated, especially when they have the knowledge that a lot of the things that are happening—the accidents and some of the incidents that have been happening in nursing homes, homes for the aged and hospitals, such as the many deaths that occur to patients—can be avoided. All it needs is a proper structure and some guidelines and regulations to help committees deal with these types of problems. Employers, on the other hand, are taking the position that father knows best, and he will take care of his children. That is basically the position that the employers have taken.

Mr Mackenzie: It would appear that the Ontario Hospital Association has as much influence as Mr Thibault of the Canadian Manufacturers' Association when it comes to influencing the Premier of the province.

Mr Land: It would seem that way.

Mr Mackenzie: One other question. You raise the fact on page 14 of your brief: "Of

course, these are only the reported claims. We have found that many employers have been and continue to encourage injured employees not to file claims and to take paid leave in order to keep their WCB costs down." I guess this is the category that some people show on their charts as medical aid situations. We had this testimony before us up north and a couple of other occasions. Do you find that this actually is a substantial practice?

Mr Land: Yes, it is.

Mr Waddell: There are employees off at this time at Laurentian Hospital in Sudbury who were infected with salmonella in the staff cafeteria who are not on WCB but being paid from the hospital at this time.

Mr Land: There are 21, I believe.

Mr Mackenzie: Of course, the complications of this down the road if there is a legitimate WCB claim and these workers have not been reported; the case does not exist when you are trying to build it down the road, as well as euchreing the figures and the payments that the employers are required to make.

Mr Waddell: Yes, indeed.

Mr Villeneuve: Thank you very much for your presentation, and certainly your profession represents to some degree a more or less unique situation in that it is not only workplace hazards but hazards from patients. I think you have explained that well.

Your recommendation strongly endorses a health and safety bill of rights. Now, that is for the employees or those people who care for the patients, the clients, whatever. I have had a fairly lengthy presentation made to me regarding workers looking after mentally handicapped people as both advocates for their clients, and they have to report to this individual, all within the same ministry. Within the Ministry of Community and Social Services there is not a separate entity. I certainly understand the dilemma.

Could you maybe elaborate on that a little bit? I presume you are speaking for those people as well who basically look after the mentally handicapped, and they may be in group homes, they may be institutionalized and may be partly in both situations, as to the dilemma that is facing people from your profession as they try to have some protection for themselves and also try and advocate for people they look after.

Mr Land: It places them in a difficult situation. It is not just in those special category areas. It is also a general problem, especially in

nursing homes again. I always claim that nursing home employees are very unique people because they often work under very poor working conditions: lack of staff, lack of proper facilities. A lot of the homes are in very bad shape. They are unique inasmuch as they care as much about their own livelihood as they do about the patients that they are taking care of.

The conflict that arises is that when they cannot seek satisfaction within the organization, within the home, or the building or what have you; that if they try to make it public, no matter what the best intentions are, they are often disciplined for doing such a thing.

We have been forced to defend a good number of workers who have gone public. I am sure that some of you can remember those days when workers went public with the conditions in nursing homes. It was mainly their concern with the quality of care. In the instances that you are talking about, it is the same situation. You have a conflict.

Sometimes when you report a situation like that, you are looked upon as a troublemaker and they try to get rid of you instead of dealing with the problem; that this person has a genuine problem or the patient has a genuine problem. That is very frustrating to deal with.

Mr Villeneuve: You might possibly want to look at that recommendation and include a health and safety bill of rights protecting both the employees and those who are advocates for the clients, the patients, whatever. I think that has to be addressed in the very near future because there is a very large vacuum there. There has to be some sort of an entity that you do not report to the people who stand to either make you look good, make you look bad. There has to be a separate reporting system there somewhere and I certainly understand the dilemma.

Mr Land: And without fear of repercussion.

Mr Villeneuve: Exactly.

Mr Callahan: There is in fact a bill of rights now for nursing homes. It came in as a result of the amendments to—

Mr Land: For nursing home residents.

Mr Callahan: Yes, but one would think that those now being the rights of the residents, that it puts an obligation upon the health care worker to report improper conditions and I would think any employer would have some difficulty in trying to react in an inappropriate fashion to them for doing so.

It is a bill of rights in favour of them by the nursing home owner and the staff, so I think it is

already there, really. Maybe it can be beefed up more, I do not know, to give you a greater protection but I think it is there anyway.

Mr Villeneuve: These are Comsoc employees reporting to the Ministry of Community and Social Services.

Mr Callahan: The bill that was brought in by our government took nursing home residents a long way down the line towards greater protection, greater reporting, greater openness. I would think that, in addition to that and in hand with that, it placed a responsibility on the owner as well as the health care providers to in fact monitor that, and I would think that under the present situation you would have a far better—I may be wrong—chance of resisting any attempt by an employer to try to muffle your concerns, certainly more than prior to that. Before that, there were basically no rights for nursing home residents.

Mr Land: There were some rights under the Nursing Homes Act. The problem with the bill of rights is that it is fine to put something on paper but if you do not supply enough funds for adequate staffing or to improve the monitoring by the inspectors—

Mr Callahan: That has in fact happened. I am not sure if it has been passed yet but there have been recent increases in the amount of funds available for nursing care. It is not that—oh, what was it, 1.5 hours or something; that is like two and a half kids in every house, some fictitious rule of thumb. But that has been upped now and, as I understand it, it is the care that is required for that particular resident. Is that not right?

Mr Land: In the past two years, there has not been one prosecution or one charge laid against a nursing home owner. The minister has stated that there will not be because she is trying to work hand in hand with the owners of nursing homes to teach them how to properly run their business. We find that quite disturbing because of the record of the nursing home industry in the past.

Quite frankly, there should be more inspectors. There should be more money put into training. Anybody can become a nursing aide. I am not sure whether you are married but your wife could go walking in off the street and become a nursing aide in a nursing home without any training to deal with violent people, without any training to deal with psychiatric patients, without any dealing with people who suffer from the various diseases that are associated with ageing. She walks into a situation like that and, in most cases, is not told whether somebody may be

violent or has psychiatric problems or has a history of this, that or the other thing, and all of a sudden, she is on the floor.

Mr Callahan: Are there not charts kept on these people?

Mr Land: To a degree. A lot of things are not charted. A lot of the times the owners attempt to persuade them not to chart certain things. That is not uncommon.

How the heck do you find out whether they are doing it right or not? Most of these things are not documented. People who work in nursing homes are very intimidated by the threat of the loss of their jobs and it is constantly hanging over them.

They are also placed in double jeopardy of having a so-called bill of rights and if they cannot fulfil the mandate, they may be also charged in court. Again, like I said, the facilities are not properly staffed. There is very little emphasis on training. It is just a terrible place to work.

Mr Callahan: I am getting the impression from you that there is some very significant conspiracy between the owners and the workers not to tell the people who can prosecute what is going on here. If that is correct, then that is something that disturbs me and should disturb every member of the Legislature.

Mr Land: That is not what is happening. What happens is that you can phone the ministry

inspection branch and remain anonymous. It is the first thing we tell people to do when they come across such situations. We tell them to do that every time and that they do not have to give their names and the ministry will do an inspection. We know that has been done but we have not seen any prosecutions. We have not seen any charges laid. Yet a few years ago there was an incredible list of charges that were laid by ministry inspectors.

The Chair: I hate to intervene but we are over time.

Mr Villeneuve: Can I have a bit of clarification? It will take only half a minute.

Residents of group homes or residents with mental handicaps who may even be with a relative still have an advocate working with them and for them. Do they have the same protection as a resident in a nursing home who may or may not have adequate protection, but it is a supplementary? Do they have any sort of protection?

Mr Land: I am sorry, I am not an expert in that and I do not really know but I will try to find out for you.

The Chair: I thank you and your colleagues for your presentation. We do appreciate it.

The committee adjourned at 1630.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair: Laughren, Floyd (Nickel Belt NDP)**Vice-Chair:** Mackenzie, Bob (Hamilton East NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Fleet, David (High Park-Swansea L)

Harris, Michael D. (Nipissing PC)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miller, Gordon I. (Norfolk L)

Riddell, Jack (Huron L)

Wildman, Bud (Algoma NDP)

Substitutions:

Callahan, Robert V. (Brampton South L) for Mr Miller

Carrothers, Douglas A. (Oakville South L) for Mr McGuigan

Lupusella, Tony (Dovercourt L) for Mr Riddell

Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mr Harris

Clerk: Mellor, Lynn**Staff:**

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:**From the Union of Injured Workers of Ontario:**

Biggin, Phil, Executive Director

From the Metropolitan Toronto School Board and the Ontario Public School Boards' Association:

Waese, Mac, Chairman, MTSB

Murray, Dr Jack, Superintendent, Capital Programming and Research, MTSB

McKeown, Dr Edward, Director and Secretary-Treasurer, MTSB

Mackenzie, Wendy, Vice-President, OPSBA

Player, Jane, Occupational Health and Safety Resource Centre Assistant, MTSB

From the Ministry of Labour:

Giasson, Gerry, Inspector, Mining Health and Safety Branch
Armstrong, Ken, Inspector, Construction Health and Safety Branch

From the Ontario Public Service Employees Union, Local 136:

DeMatteo, Bob, Health and Safety Co-ordinator

From the Ontario General Contractors Association:

Tindale, J., Vice-President, Operations, McKay-Cocker Construction Ltd; Past President,
Construction Safety Association of Ontario

From the Ontario Secondary School Teachers' Federation:

Livermore, Jim, Executive Officer
St Amand, Doris, Vice-President
McCulloch, Kim, Vice-President

From Noranda Inc:

Pratt, Courtney, Senior Vice-President, Human Resources and Strategic Planning
Keenan, John, Director, Industrial Relations and Policy

From the Labourers' International Union of North America:

Kovaks, Jerry, Counsel
Reilly, Michael J., Secretary-Treasurer

From the Dufferin-Peel Roman Catholic Separate School Board:

Blazejewicz, Richard, Safety Officer
McInerney, William A., Associate Director, Support Services
LaChaine, Roger, Trustee
Melito, John, Superintendent of Business

From the Canadian Union of Public Employees and the Ontario Council of Hospital Unions:

Land, Bruce, Provincial Co-ordinator for Health Care Workers, CUPE
Waddell, Bob, President, OCHU





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No. R-17 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Resources Development

Occupational Health and Safety Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Monday 19 February 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 19 February 1990

The committee met at 0905 in the Scandia Room, Valhalla Inn, Thunder Bay, Ontario.

OCCUPATIONAL HEALTH AND SAFETY STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Chair: The standing committee on resources development will come to order. We are pleased to be in Thunder Bay this morning. The resources development committee was given the task by the Legislative Assembly of conducting public hearings on Bill 208. We are at the end of that process now. We have a hearing today in Thunder Bay and tomorrow in Dryden. When that is concluded, we go back to Toronto, and on Wednesday we begin the clause-by-clause debate of the bill.

That is the part of the process in which amendments, if any, are made to the bill. Every single clause is examined. All of the suggestions that have been put to us by the presenters in the last month have already been summarized and will be considered when we examine each clause of the bill. On 26 March the bill is referred back to the Legislature for final disposition, whatever that might be. So that is the process in which we are engaged.

The membership on the committee consists of roughly the same proportions of members as there are in the Legislature by party. In this case, that means six Liberals, two Conservatives, two New Democrats and a chairman. I will introduce the members of the committee to you now. There are a couple who will still be joining us.

We have Doug Carrothers, Oakville South; Mike Dietsch, St Catharines-Brock; we are pleased to have Sterling Campbell joining the committee this week from the riding of Sudbury; Bob Callahan, Brampton South; Maurice Bossy — just as an aside, today is the 10th anniversary of Maurice Bossy's election to the federal House of Commons. He then moved to the provincial scene. He represents the riding of Chatham-Kent. Next is Jack Riddell, Huron; Margaret Marland, Mississauga South; Bud Wildman, Algoma; Bob Mackenzie, Hamilton East. I am Floyd Laughren

and I represent the riding of Nickel Belt, which is near Sudbury.

We have a really full agenda that takes us right through till 5:30 this afternoon, so we do not want to get far behind. There are not too many rules, but there are a couple.

One is that each presentation cannot exceed 30 minutes. You can use whatever part of that 30 minutes you want to make the presentation and leave the balance for an exchange with members of the committee, or you can use the entire 30 minutes to make the presentation. That is up to the presenter. But we do not go over the 30 minutes because then we get backed up and it cuts people off at the end of the day.

Another rule is that we have invited people to make presentations to the committee and they are here at our invitation. Therefore, we do want to hear all the views, and I would ask that you allow them to do so without harassing them. Our audiences have tended to be co-operative in that regard and to allow people to make their presentation. Even though you might most profoundly disagree with what they are saying, they certainly have the right to be heard.

I see in the audience a federal member of Parliament, Iain Angus from the riding of Thunder Bay-Atikokan. For those of you who do not know, Iain Angus was a member of the provincial Legislature for a few years as well. Iain, welcome to the hearings this morning.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCALS 306, 702

The Chair: We should proceed immediately with the first presentation, which is from the Ontario Public Service Employees Union. We have Ethel LaValley here, and I would ask her to introduce her colleague and we can proceed.

Ms LaValley: My colleague is Sister Ruth Bergman, a member of the Ontario Public Service Employees Union executive board.

Good morning, Mr Chairman and members of the committee. It is indeed a pleasure to be here in Thunder Bay on this brisk, cool morning.

My name is Ethel LaValley. I work for the Ministry of Natural Resources and I am an executive board member for the Ontario Public Service Employees Union. As already indicated, sharing this brief with me today is Ruth

Bergman, who works for the Ministry of Health in Kenora and is also a member of our board.

We are here to tell you that we have some grave concerns about Bill 208. It is our view that the bill is not a significant step forward in health and safety reform. In fact, we believe that this bill is a step backward. I will now turn it over to Ruth Bergman.

Ms Bergman: This bill is particularly a slap in the face to the large and growing number of working women. There are over 200,000 health care workers in this province, most of them women. There are tens of thousands of office workers in the so-called pink ghetto, most of them women. There is a large female workforce in the food, commercial, retail and electronics industry, and over half of our members are working women. Given the jobs that we do and the hazards we face at work, Bill 208 does not improve our lot. This government does not take the health and safety concerns of women seriously.

You have heard from many of our members who have complained about the serious and debilitating injuries they suffer in the government's electronic sweatshops, and if I can digress for a minute, I am sure sweatshops have a connotation for all of you who study history, and they are indeed sweatshops.

You have heard about the illnesses they suffer from polluted air in their workplaces. Over 25 per cent of our members who work as data entry clerks in OHIP have developed repetitive strain injury. Their employer, who is the government of Ontario, has been unwilling to address this problem. When we complain, we are treated like hysterics. The Ministry of Health is one of the largest employers of women. It has the worst workers' compensation record of any government sector. It has a higher number of days lost due to illness than any other ministry. It is even higher than the national average.

Our members in psychiatric hospitals are victims of patient assaults. Psychiatric hospitals contribute to over 89 per cent of the total workers' compensation costs. Assaults on staff continue to rise. One of our members who worked at the Lakehead Psychiatric Hospital was beaten brutally by a patient while she was pregnant. The employer was made aware prior to this that this patient had threatened to kill her baby. These pleas were ignored.

This patient had made these threats and the staff person was fearful. She was not reassigned. She was punched in the stomach and she had a premature delivery. Her doctor, in his opinion,

states that she may not be able to have any more children as a result of this injury.

The Lakehead Psychiatric Hospital presently has 25 to 30 registered nurses and registered nursing assistants who are off from the nursing staff on workers' compensation. Some of these are injuries that if the staff are reassigned when they come back from workers' compensation, they are going to be repeated. If they are assigned back to the same units, they will reinjure themselves, and so the cycle continues. They have no choice, no right to refuse unsafe work.

Many women in our workplaces face serious reproductive hazards. These range from poorly designed equipment to exposure to chemicals and radiation. I work for the Ministry of Health. I work with a video display terminal. I and my colleague who works with me in the office have had our families and we are not going to be having any more children, but a new young employee coming in working on a VDT machine with this low-level radiation. You can get a story that says there is no problem; you can get one from Sweden. Pick one: There is no danger. However, if I was of child-bearing age, able and wanting to have a family, I would not work on a VDT machine when I was pregnant. There have been some changes made to that, but the hazard is still there. It is unsafe work for our members.

Poorly designed equipment and exposure to chemicals and radiation: this is particularly true in general hospital laboratories. Many of these labs are not particularly properly equipped to prevent exposures and many do not even have established health and safety policies. This government has neglected, for the last 11 years, to establish health and safety regulations for health care facilities. In fact, the present government refused to enact a set of health care regulations that were developed by a joint labour-management committee over two years ago. It is a committee that met and that is it. The government bowed to pressure from the Ontario Hospital Association and the Ministry of Health which did not want any regulation at all. These workers are left without any protection in the law and they are also denied a clear right to protect themselves under the right-to-refuse provision of the act.

Bill 208 does not change this situation. In fact, it further weakens the right to refuse for all workers. Many thousands of office workers are denied the right to have a joint committee. They have no place to raise their concerns and even if they did, we know that the committees are very

ineffectual. The bottom line is that the employer can sandbag you for ever.

Ms LaValley: The situation in the Ministry of Natural Resources is not very good. Our members do very dangerous jobs. They handle dangerous pesticides and herbicides, they fight forest fires, they work in laboratories and many times have to deal with an angry public.

We have had the second-highest rate of fatalities and one of the highest rates of workers' compensation claims and days lost per 1,000 employees. We have had members develop serious respiratory disease in our tree seed harvesting plants.

In one plant in Angus, Ontario, a large number of workers developed reduced lung function because of high exposure to dust. They worked in huge clouds of dust. There was no protection or proper controls for these workers. The employer was condoning practices that are absolutely forbidden by the safety regulations.

These illnesses and plant conditions were investigated by the Ministry of Labour. However, no orders were written and no charges were laid after this situation was confirmed.

Our members who work in the ministry's research labs are also at great risk from exposures to many toxic chemicals. At the ministry's oldest and outdated lab near Maple, Ontario, we found that at least 15 scientists and technicians have developed cancer in the last 19 years, and six have died. Ministry of Labour investigation showed that this lab was not properly ventilated and equipped to prevent toxic exposures.

The ministry's forest firefighters perform extremely dangerous work. You will recall the tragedy which took place in Nakina several years ago. Several people burned to death when a prescribed burn went out of control because the fire crew was inexperienced. In fact, they were students.

0920

This past year, the ministry introduced a new fire crew system which reduced the size of each fire crew from five to three. This was done to accommodate an arbitrary budget cut imposed on the ministry by the Treasurer of Ontario. This led to a cutback of approximately 232 regular fire crew members. The ministry also proposed to use untrained extra firefighters in this cost-saving move.

They also removed the second portable radio from crews dispatched to first attack on a fire. It was our view that this new system posed a serious hazard to fire crew members. Fires would be

more difficult to control and raised the risk of injury dramatically.

There was absolutely no consultation with our union or the fire crew members through the health and safety committee system. It was just announced as an accomplished fact. When we raised these issues at our joint committees, we were simply rebuffed by the employer. They would give us no evidence that this new system would have proper risk management built into it.

Our Red Lake district fire crews were forced to advise the employer that they would refuse to be dispatched to a first attack fire without additional trained crew members. They were supported by other firefighters in Dryden, Fort Frances, Kenora, Sudbury, Thunder Bay and Sioux Lookout. The Ministry of Labour inspector investigating this advised us that he had been ordered not to treat this as a work refusal. He would investigate only if the refusal occurred at the fire site itself, with the flames licking the firefighters' behinds. This was absurd from both a safety and a scientific point of view.

We find that the internal responsibility system is not working adequately to address workers' health and safety concerns. There is little in the way of strong enforcement to back this system and our rights in the workplace are extremely weak.

Ms Bergman: Bill 208 does not work to protect workers' health. We expected that the announcement of reforms would bring significant changes for the health and safety of all workers, including women. We need serious changes in the legislation and not the window dressing that we find in Bill 208.

Specifically, clauses 8(1)(a) and 8(1)(b) under section 4 of the bill must be repealed so that all workers have a right to a joint committee. Joint committees should be made more effective by providing worker members of the committee the power to issue provisional improvement notices.

Repetitive strain syndrome was mentioned a few minutes ago. OHIP keypunch operators are especially susceptible to severe neck, shoulder and arm pains caused by intense, continuous keyboard work, poorly designed equipment, high quotas and infrequent work breaks. Some members are now on long-term disability because they did not have the right to refuse to do work which was injuring them permanently.

This condition can be prevented and you, as a standing committee, have the power to help that to be prevented. The safety law should protect workers who are injured as a result of poor working conditions, but it does not. We looked to

Bill 208 to help us, but sadly, Bill 208 will not stop this situation from happening again. It will not give us the right to refuse activity which causes chronic health problems.

Here is how the situation can be improved: Subsection 23(3) must be amended to provide workers with the right to refuse where activities they perform are likely to cause long-term and short-term acute injuries or illnesses. Bill 208 will not give us more effective joint committees to resolve our health and safety problems. Bill 208 will not enable inspectors to assist us any better than they did before.

Ms LaValley: The right to refuse dangerous work: The bill does not remove the restrictions on the right to refuse imposed on health care personnel, nor does it repeal the exclusion of firefighters, police and correctional employees.

It is clear that these restrictions are not justified from a public safety point of view. The only result of these restrictions has been to prevent serious workplace hazards from being resolved promptly. Subsections 23(1) and 23(2) must be repealed.

The bill does not prohibit employers from reassigning refused work to other workers before the safety issue is resolved. That unpleasant and foolhardy feature puts other workers in jeopardy. Subsection 23(11) must be repealed and amended to prohibit such reassignments.

Bill 208 does not expand the application of the refusal provision to work activities that can cause disabling chronic injuries like those that affect OHIP keypunch operators. Subsection 23(3) must be amended.

When it comes to paying workers during a work refusal, Bill 208 takes us backward. Under Bill 208 workers are paid only during the employer's investigation into their refusal but not if they continue to refuse and call in an inspector for an independent evaluation. This amounts to holding people up for ransom. In effect, it takes away the right to refuse dangerous work.

The section on 100 per cent payment must be deleted and subsection 23(10) of the act amended to guarantee payment at all stages of the refusal.

Ms Bergman: I would like to talk about joint health and safety committees. Joint committees will not be made more effective if employers are given 30 days to respond to joint committee recommendations. That is a month. Thirty days is much too long, especially if the reply from the employer turns out to be negative. We strongly recommend that management be given seven days to respond to joint committee recommendations.

Training, without the power to act on the knowledge received during the training, will not improve the resolution of contentious issues.

Worker committee members need some levers that encourage employers to be proactive as opposed to reactive. Providing workers with the power to issue provisional improvement notices is one such mechanism. Section 8 must be amended to enable worker members of the committee to issue provisional improvement notices.

The power to shut down unsafe work is another key issue but Bill 208 provides this power only symbolically. This section of Bill 208 must be changed to allow a certified member the right to shut down work where he has reason to believe the work is unsafe. In doing so, they must not be subject to disciplinary action.

If I can digress for a moment, this is a very large fear of a lot of women workers. They are working because they have to. They need their jobs. They have to be able to pay the rent and find the means to provide groceries, and as all of you know everything is escalating, so it gets tougher and tougher. They really have a problem with shutdowns and disciplinary action.

0930

Ms LaValley: Legal enforcement: Bill 208 does little to address the whole problem of enforcement. Inspectors are not provided with more effective enforcement powers and sanctions.

Raising the maximum fine to \$500,000 for a conviction under the act when convictions and prosecutions are already hard to come by and the average fine is a little over \$2,000 really, quite frankly, misses the point. Section 29 of the act must be amended to oblige inspectors to issue orders and sanctions whenever a violation of the act occurs. Further amendments must provide inspectors with the power to issue immediate civil penalties in the form of fines whenever a violation occurs.

Ruth will do our conclusion.

Ms Bergman: Our members are at risk when they go to work, and all too often they have no means to protect themselves. They must work and risk sickness or injury, with no recourse. For this reason, we appeal to you to make the recommendations we suggest. I will read them:

Guarantee the right to joint health and safety committees;

Give the employer no more than seven days to respond to joint committee recommendations;

Enshrine an unrestricted right to refuse unsafe work;

Do not allow refused work to be assigned to other workers;

Expand the definition of "hazardous work" to include that which causes chronic disability;

Make sure that certified workers can impose a work stoppage and issue temporary work orders without recrimination;

Insist that ministry inspectors be called in when there are workers' concerns to be investigated;

Ensure that workers are paid for the entire duration of a work refusal; and,

Give the inspectors some muscle by empowering them to impose immediate work orders and sanctions.

I would like to thank the committee on behalf of Ethel and myself for listening to our suggestions, and I would like you also to imagine that you are in our shoes or that your wives and daughters are. Surely you would want them to work in safety, in a situation that does not threaten their health and sometimes their very existence.

If you put this matter of life and death first, you will do the right thing and endorse our demands. Again, we thank you.

The Chair: Thank you for your presentation. There is a little over five minutes left and Mrs Marland, Mr Wildman, Mr Campbell, Mr Mackenzie and Mr Wiseman wanted to ask questions. I would urge you to be as brief as possible and give other members an opportunity.

Mrs Marland: I will yield to other members.

Mr Wildman: First, how does it affect the morale of your members to know that your employer, the government of Ontario, which gives you the responsibility to look after patients and inmates across the province, does not believe you are responsible enough to exercise the right to refuse unsafe work in a responsible manner?

Ms Bergman: It affects the morale, as you can well imagine, to a high degree. Our people who work in the correctional institutions, in the psychiatric institutions, in the group homes that care for the troubled children of our society, do not have the right to refuse work. They have to go to work, they have to contend with whatever situation they find themselves facing at that period of time, and it is stressful. It cannot be anything else. Daily, day in, day out, 12-hour shift or eight-hour shift, whatever you are working, is continuous stress, continuous not knowing, and it is something you have to do. You do not have the right to refuse it.

Mr Wildman: The other question I have is in regard to page 6 and page 7 of your brief on the

cutting of the number of firefighters and the cutting of the fire crews and the emphasis, in serious situations, on using inexperienced firefighters. When this was raised in the Legislature and as well by your union, the former minister argued that it was not a problem because they were dispersing the fire crews more evenly across northern Ontario.

Since there has been a new minister appointed, has your union approached the new minister, Lyn McLeod, to emphasize to her the danger that firefighters face as a result of this arbitrary cut in the number of fire crews?

Ms LaValley: Yes. That is a really good question. We have made, in our opinion, some significant gains on the forest firefighter situation. While we presently cannot address the job security part of it, the three to five, we are addressing the health and safety concerns by way of certification, by way of the grandfathering, etc.

As a result of the Red Lake situation we put together a joint task force on firefighters. We just two weeks ago gave our recommendations to Mr Lingenfelter, the director of aviation, who accepted all eight recommendations from that committee and felt they were very, very good recommendations. He has promised us they would go to the deputy minister and the minister to take a serious look at it. We are hopeful that these recommendations will be put in place for the upcoming season.

The firefighters, quite frankly, are not happy. They still feel that they are at risk with three people. Their opinion is that the ministry can talk about it and, to put it in milder words, can say in many, many ways that they are not expected to do more with three, but in reality they are.

Mr Wildman: So the bottom line is, even after all these discussions, they are still staying at three instead of five?

Ms LaValley: The recommendation that I have from the ministry is that they are looking at a four-man crew in some areas of the province. So if you want to talk about negotiations, "Well, we won't give you five, but maybe we'll look at four. That is the situation. But I will be happy to talk to you again about it."

Mr Campbell: I would like to ask Ms LaValley about the dust exposure that she talked about on pages 4 and 5 of her brief. When you say there was no protection or proper controls for these workers, is that current practice or was that changed? Could you give me a time frame of when you documented that?

Ms LaValley: Unfortunately, I do not have all the documentation with me. My understanding is that it has been looked into, but I can get you the documentation and any specific information you require from our public relations department at head office.

Mr Campbell: If you could clarify past practice and current practice, I think it would be helpful.

Ms LaValley: Certainly; I will do that.

Mr Campbell: On page 8 of your brief, you mention poorly designed equipment and so on—I believe they were stations at OHIP—and pains “caused by intense, continuous keyboard work, poorly designed equipment, high quotas and infrequent work breaks,” all tied together. What specific equipment problems are you experiencing in this work?

Ms Bergman: We are talking about data processing and someone who uses a type board. I am sure many of you have your own computers. You know that you have to be at a certain level. Your arms must be straight to reduce strain and cause you not to have any injuries. Your back has to be straight and your feet should be positioned.

A year ago, after we had several grievances go through our OPSEU system from people who were injured because of poorly designed equipment, the Ministry of Health, OHIP specifically, introduced new workstations that are very comfortable. I work at one of them and it does have a table that I can adjust my monitor with, so that I can have it up or down. I wear trifocals; everyone does not see the same, so you have to be able to adjust it to you.

We also have been provided with footrests—well, not really “rests,” they are kind of a chrome bar but they do allow you to change your feet position so that you are not locked in and causing your body to stress. So that part of it has been designed.

Mr Campbell: Okay. So you are saying that the current practice has changed and this was prior practice—

Ms Bergman: It has been updated, yes.

Mr Campbell: There is some work improvement.

Mr Wiseman: If I could go to page 13—and I have asked this question before—where you mention that certified workers, if they make a mistake and shut down an operation, should not be decertified, as the bill says. You say the fine has only been about \$2,000, and then in the new bill it is \$500,000; and in another place you say they should be paid for the duration of the

shutdown. I take it you mean not only the worker on that machine, but perhaps in a mine it could be more than one.

0940

I, for the life of me, cannot see, if you are going to get harder and harder on the employer, if a person who is a certified person makes a mistake and shuts a line down and maybe endangers the jobs of his co-workers—because in some we have heard that where they are in assembly lines it could mean the difference that they would lose that contract—I cannot see that even decertifying a person is a hard enough slap on the wrist for doing it. If they are trained in safety and they know whether it is safe or not and they deliberately shut something down that was not necessary, then I feel they should be dismissed. If you are asking for all these other things—stiffer fines, payment for the employees who are shut down as a result of this person’s commitment that it is unsafe—what is your feeling on it? How do you justify that?

Mr Mackenzie: You could always draw and quarter them, too, you know.

Mr Bergman: I think you are starting from a wrong premise and that is where we get into disagreement. Your premise is that someone is going to shut down a line or shut down a plant or close up a group home—or whatever the unsafe working conditions are—frivolously. We do not do anything frivolously. We do it because it is our lives. I am sure that if you were in that same situation, or your daughter or your wife or your grandmother were working in that situation, you would want that same right for them.

Mr Wiseman: Last Wednesday we heard from a group that had 300 work refusals. They had only a small portion of that—and I cannot remember exactly—referred to the Ministry of Labour and the Ministry of Labour held up 11, I believe it was. That was last Wednesday in Toronto. So there are a lot of work refusals that are frivolous, or whatever you want to call it; they are not necessary. That is not just one example. We have had others. So again I just ask you: Do you think it is fair to come down hard on your employer at the same time as someone has deliberately put the people out and not had just cause, after training? Should they not be dismissed rather than no disciplinary action taken? I cannot go for that.

The Chair: I wish we could carry on this debate, but we are over time and we really must call a halt. Ms Bergman, Ms LaValley, it is good

to see you again, and thank you very much for your presentation.

CONSTRUCTION ASSOCIATION OF THUNDER BAY

The Chair: The next presentation is from the Construction Association of Thunder Bay. Gentlemen, we welcome you to the committee. If you will introduce yourselves, we can proceed.

Mr Knudsen: Good morning to you. We are Erik Knudsen and Harold Lindstrom, members of the Construction Association of Thunder Bay.

We are here to present to the standing committee on resources development our position concerning Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

This is a brief respectfully submitted by the Construction Association of Thunder Bay. The Construction Association of Thunder Bay represents 200 employers in all branches of the construction industry. The Construction Association of Thunder Bay is a member of the Council of Ontario Construction Associations.

Bill 208 is not needed for the construction industry. We have a very successful and proven formula for safety that should not be tampered with. The continued safety training of every individual construction worker, both union and nonunion, is in our opinion the best method to reduce accidents and increase safety awareness. The Construction Safety Association of Ontario has this as its mandate.

A safer workplace is achieved by working hand in hand with workers, employers, owners and government. It is our opinion that Bill 208 will not accomplish this. Bill 208 makes reference to several so-called improvements which will be implemented due to its passing: the certified worker and his right to stop work, and the creation of a safety agency to oversee the Construction Safety Association of Ontario and its joint union-management makeup.

The certified worker will create an élite group of nonproductive workers, rather than provide safe training for every worker as is done now by the Construction Safety Association of Ontario.

The Ministry of Labour construction safety branch should be the only authority allowed to shut down a construction project for safety reasons. The individual worker already has the right to refuse unsafe work.

The proposed safety agency of Bill 208 would duplicate much of the work of the Construction Safety Association of Ontario. Why disrupt and stifle a process that is working so effectively and

showing a significant improvement trend? The common goal should be to build on positive achievements of the Construction Safety Association of Ontario. The CSAO's major achievement of the last two decades has been a steady reduction in the accident frequency and fatality rates across the industry. Compared to construction elsewhere, Ontario's safety record is the best in Canada and among the best in the world.

The new safety agency proposes equal representation of management and union. The Construction Safety Association of Ontario currently has a provincial labour-management committee with equal representation. Thunder Bay's local labour-management committee meets once a month to discuss safety and accident prevention and takes effective action to improve safety conditions in the workplace.

The Ontario Occupational Health and Safety Act regulates safety on construction projects in Ontario. Enforcement of the act is carried out by inspectors of the Ministry of Labour upon receipt of notice of project. An increase in the number of inspectors would result in policing of projects that do not now require a notice of project and increase safety inspection on all construction job sites.

The right to stop work or close down a job site now lies with the Ministry of Labour's safety branch job site inspectors. The unilateral right of a certified worker to close down a construction project should not be allowed as proposed in Bill 208. The very nature of the construction industry, employee turnover, would make it very difficult to have a certified worker on every project.

Do not create an élite group within the construction industry, but accelerate existing safety programs for all construction workers. The construction industry in Ontario through steady progress and leadership in safety has earned the right to special consideration with regard to Bill 208. Let the Construction Safety Association of Ontario continue with its very successful work.

To invite a healthy investment climate in Ontario and the safest possible workplace, served by the safest construction industry in Canada, exclude the construction industry of Ontario from Bill 208.

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The Chair: On the bottom of page 2 and the top of page 3 you state, "An increase in the number of inspectors would result in policing of projects that do not require a notice of project and increase safety inspection on all construction

sites." You do not say whether you like that or do not like that.

Mr Knudsen: What we are saying is positive here. An increase in the number of inspectors would result in policing of projects that do not require a notice of project now. What we are trying to say is that if notice of project had to be given on all construction projects and more construction safety people, inspector types, were hired, we would have more people checking out the safety on projects.

The Chair: So you are calling for more safety inspectors in the construction industry.

Mr Knudsen: On site.

Mr Mackenzie: Is it not a fact that the construction industry still has one of the highest rates of workers' compensation assessments in the province.

Mr Lindstrom: The highest rates?

Mr Mackenzie: One of the highest rates.

Mr Lindstrom: The construction industry has several rates, depending on what type of construction you are in. I guess there probably are some rates in our industry that are the highest of any other industry. That is true.

Mr Mackenzie: I am wondering where you get and how you defend the argument that somehow or other you are going to create an élite group of workers if they go through the certification process. Literally hundreds—I suspect, as a matter of fact, thousands—of workers, including management people incidentally, have gone through the various courses through the Ontario Federation of Labour now and I sense a real pride in the knowledge they are learning about health and safety, not any élitism.

Mr Knudsen: We think there will be élitists. We think every construction worker should be trained.

Mr Mackenzie: You have had the CSAO for some time. How do you answer for the fact that you have a 100-man board in the Construction Safety Association of Ontario and only 13—indeed, I am not sure it is 13—worker representatives on that board? How do you answer for the fact that the organized trades in this province have rejected not only the quality and the right of the CSAO to be the safety training agent in the province, but also the position you have taken in opposition to this bill?

Mr Lindstrom: I do not think any situation you have is going to make everybody happy. We are presenting our case and I guess labour is going to present its side and you people are going

to have to make your decision on what you are going to take from each side. Right now we think that it is very one-sided. Apparently, seeing labour's international here this morning, I guess they do not believe in the bill either. I guess, if both of us are complaining, there must be something wrong with Bill 208. We are not pretending to have all the answers. We are only a little segment of the industry. You are writing a bill or having one written here to deal with all industry. All we are saying is that we cannot see how you can implement Bill 208 in the construction industry.

First of all, we have not had anybody really ask us how the implementation would take place. If you are familiar with the construction industry at all, on a given project we may have 20 or 30 companies involved and 20 or 30 different trades. To which does the individual certified worker belong, or does he belong to every one of the trades? That would make, say, 20 or 30 certified workers on a given job. What do you do if one certified worker wants to close down the job and another one does not want to? The implementation really becomes a problem.

We are not against safety. I do not think anybody wants to see human life lost or somebody injured, but we are against things that cost us and the purchasers of our industry vast amounts of money with no improved benefit in it.

Mr Mackenzie: The mechanics of working out the construction site problem do not seem to throw at least the organized workers. When you say they have their view when they oppose your brief and you have your view, is it not a fact that the 35 construction workers who died last year and the almost 18,000 who were injured were the workers, not the construction owners or managers?

Mr Lindstrom: I do not have any real defence against it. Yes, there were workers who died, but that is just like saying you have people die in car accidents. Are you going to stop the manufacture of cars in this province?

Mr Mackenzie: I think it does say that they have a right to give their views and maybe carry a little more weight in terms of what should be there in the way of health and safety legislation, because they are the ones who are dying and being injured.

Mr Lindstrom: We are not objecting to their views. We are only asking to have a chance to give ours.

Mr Dietsch: In relation to your comments on the bottom of page 1 of your brief, you indicate

that the Construction Safety Association of Ontario is presently providing training for every worker. Groups that have made other presentations before us refute that statement. Is the Thunder Bay area different from some of the other areas in the province as far as construction goes? What is meant by "providing training for every worker now" from the CSAO?

Mr Lindstrom: The training for the workers is available. Whether they take advantage of the training is another aspect. All the training programs, all the literature and everything else produced by the construction safety association is available to all workers if they take advantage of it.

Mr Dietsch: So the training material is there. It is a case of, in your view, workers not taking advantage of that training. I guess a worker would probably, on the other side of that question, say, "Why hasn't management enforced training being done?"

Mr Lindstrom: I think the big thing there in the dispute between ourselves and our employees is whether they should be paid to be trained or not.

Mr Dietsch: What is your view on that?

Mr Lindstrom: Our view is that there are professionals in our society who pay for their own education and if the worker is considered to be among those types of people, then he should pay for his own education as well.

Mr Dietsch: Do you have a training policy in your particular firm?

Mr Lindstrom: Yes, we do.

Mr Dietsch: Do you pay for the training?

Mr Lindstrom: For part of it, we do. For other parts, we do not.

Mr Dietsch: Is training within your firm compulsory? Is it mandatory that the people who work for you be trained? How do you operate in that respect?

Mr Lindstrom: For a certain amount of the work, it is mandatory that they be trained, yes. For other trade classifications, no.

Mr Wiseman: I have a supplementary to Mr Dietsch's questions. I believe we did hear in Ottawa—or was it Kingston?—of a construction firm where they had their employees sign a statement that they had read the safety manual and so on as a condition of employment. I suppose, as an employer myself, you have to take them at their word if they say they have read it and have signed it. But we did hear that and we have heard where some construction people, I

believe, had given them up to five hours of safety training. So what you said here this morning is not unique, that you feel everyone should be trained in safety on construction work.

I would just like to say that you are pretty modest this morning in congratulating yourselves, because the construction industry has come a long way in the last number of years. We have heard we do not toot our own horns enough in Ontario. Even workers' compensation has put out a booklet bragging about how you have brought your accidents down. There is still room for improvement, but you have come a long way. You have shown that you can do it without Bill 208, too.

The Chair: Mr Knudsen and Mr Lindstrom, thank you very much for your presentation this morning.

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MINES ACCIDENT PREVENTION ASSOCIATION OF ONTARIO

The Chair: The next presentation is from the Mines Accident Prevention Association of Ontario. I recognize Graham Ross from other lives, and Mr Coughlan. Gentlemen, welcome to the committee this morning. This committee is not new to the Mines Accident Prevention Association of Ontario, having studied safety in Ontario mines a couple of years ago. If you will introduce yourselves, we will proceed.

Mr Ross: Good morning, ladies and gentlemen. My name is Graham Ross. I am president of the Mines Accident Prevention Association of Ontario. On my right is John Carrington, vice-president of the association, and on my left is Bill Coughlan, the executive director.

The Mines Accident Prevention Association of Ontario, known as MAPAO, appreciates this opportunity to express its views on the impact of Bill 208 on the operations and effectiveness of the association.

As you are aware, MAPAO is one of nine safety associations in Ontario and is dedicated to promoting health and safety in the mines and mining plants of the province. MAPAO has a headquarters in North Bay with a permanent staff of 30 and annual funding of some \$2.6 million generated by a levy on mining companies through their Workers' Compensation Board assessments.

MAPAO is presenting this brief because it has a genuine concern that provisions of Bill 208 might weaken rather than strengthen the excellent progress in accident reduction made to date

by the Ontario mining industry, and it wishes to draw this to the attention of the Legislature.

Mining industry safety performance: In terms of the total working population of Ontario, mining is quite small, with some 30,000 people employed directly in the industry. This represents approximately one per cent of the total Ontario workforce.

Beyond all proportion to its size, the mining industry attracts a great deal of attention with regard to safety. Developments within the industry, both positive and negative, are reported widely by the media to a public that seems eager for the information. The stereotype is that mining is a dangerous occupation and this negative image is, unfortunately, frequently reinforced by the media and industry detractors whenever an accident occurs that is in any way spectacular.

Those of us who earn our living in the mining industry see things differently. We know that mining consists of a great many activities that can be categorized in a hierarchy of risks, ranging from very low risk tasks to those identified as high risk. Recognizing that a state of zero risk is impossible to achieve, the industry has developed its safety programs based on identifying and minimizing risks to the point where work can and will be performed safely.

In 1976, Dr James Ham provided the mining industry with a new framework within which to look at mine safety. Dr Ham's thesis on the separation of responsibilities for safety performance provided a clear direction for the future. He identified two broad sectors that impact on the safety efforts of an organization.

First, he attributes direct responsibility for safety in the workplace to senior management, supervisors and workers. Second, all others who have a role in safety, such as safety associations, unions and government are said to have contributory responsibility.

Dr Ham correctly predicted that the highest level of safety possible in an industrial organization would occur when the three groups with direct responsibility participated in co-operatively solving problems. To describe this process, he coined the phrase "internal responsibility system," and it is the adoption of this system that has brought the Ontario mining industry to where it is today in terms of safety performance.

The mining industry recognized that safety was as important a part of the business as any other before Dr Ham's investigation and report in 1976. New ideas involving co-operation with workers on health and safety matters were being implemented in major collective bargaining

agreements by the mid 1970s, and while changes in any industrial culture mature slowly, the evidence demonstrating the positive results of change first became apparent in 1975. Accident rates began to show a steady year-by-year improvement which has continued to the present.

When it was recognized by leaders of the Ontario mining industry that the status quo was unacceptable and that change was required, a new direction was sought. An internationally recognized program known as loss control was identified and endorsed as being the best potential cornerstone for the industry's safety efforts.

MAPAO assumed the task of promoting and delivering this program to mining companies in Ontario through the trained professionals on its staff. In addition, MAPAO offered an audit service that companies can call on to periodically determine their progress in implementing the principles of loss control. This audit is known as the international five-star safety rating system. It is encouraging to note that it has already produced several awards at the highest level, with many other operations approaching the covered five-star award.

MAPAO is very proud of its contribution to this success story. Training in the loss control program, along with more recently acquired competence in a supporting program known as system safety or fail-safe analysis, has helped in large measure to accomplish the major improvement in accident reduction. Slide 3 in your handout indeed shows that the rate of compensable injuries in mining is now below the average for all other Ontario industries.

Turning to the present structure of MAPAO: Overall direction of MAPAO is provided by a 15-member board of directors composed of volunteers representing and reflecting the make-up of the Ontario mining industry. These groups are the gold mining industry; nickel; uranium; iron; the mixed metals; soft rock; mining contractors; diamond drilling contractors; and the two major labour unions active in the Ontario mining industry.

It should be noted that organized labour participated in the affairs of MAPAO at the board level in 1984 and 1985 but has declined to do so since that time. Efforts have continued unsuccessfully to encourage labour to resume active participation in the affairs of MAPAO.

As an indication of the importance placed by the mining industry on MAPAO, the management appointees to the board range in position

from a loss control manager to a company president.

Four permanent technical standing committees have been formed by the board to investigate and report on specific matters. They are the safety and loss control committee; the workplace environment committee; the underground equipment committee; and the ground control committee.

Each committee is an instrument of the board and is composed of volunteers who are experts in their respective fields. Their time and expenses are paid for by their companies.

MAPAO's position on Bill 208: Two components of Bill 208 will have a major impact on the functioning of MAPAO and it is to these two issues that MAPAO will restrict its comments. Other issues contained in the bill, although they pertain to safety, would be more appropriately addressed by individual mining companies.

The issues that will have the most direct impact on MAPAO are: (1) the composition of our board of directors; and (2) the relationship to the proposed health and safety agency.

The framework within which the directors of MAPAO view these issues is our concern, that whatever evolves from this legislation must support Dr Ham's concept of the internal responsibility system.

Issue 1: Labour participation on the board of MAPAO. The internal responsibility system requires effective, knowledgeable participation by all parties with all groups contributing according to their ability. We agree that labour shares our interest in safe production. In recognition of this, the directors of MAPAO passed a resolution in May 1988 increasing the labour component of the board from two to five and adding another two seats to be filled by persons from the general public.

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Bill 208, on the other hand, proposes a board that is divided equally between management and labour, with no public representation. We see no compelling reason for this change. Our effectiveness in reducing accidents depends on the dissemination of safety knowledge and awareness coupled with an acceptance of responsibility by the workplace parties. It is management that has the primary responsibility for the establishment and conduct of safety education, and it is management that is ultimately accountable in law for safety in the workplace.

Setting aside the issue of numbers, MAPAO has strong views on the selection criteria for labour representation on its board. It is our

opinion that at the very least the labour representative should (1) be actively employed in the mining industry in Ontario; (2) be representative of the various sectors of the industry; (3) be recognized as having demonstrated a commitment to the improvement of health and safety; (4) be a worker who does not hold other union office, similarly recommended by Burkett for worker inspectors; and (5) be representative of both unionized and nonunionized workers.

Issue 2: The health and safety agency. Bill 208 provides the creation of an agency to oversee the activities of the safety associations as part of its duties. MAPAO has several concerns regarding this relationship: (1) To preserve the sectorial nature of our business, MAPAO must retain a high degree of autonomy. (2) The volunteer aspect of our board, committees and safety groups must be preserved. (3) We must avoid the situation where individuals who are not aware of the specific nature of the mining industry attempt to impose their solutions as a result of a false perception of our problems.

Positive responses to these concerns must be provided in order to ensure the support of the mining industry for its safety association and the proposed agency.

In general, MAPAO sees little evidence that any restructuring which would impose an additional layer of administration and policymakers will make MAPAO any more effective as a safety association.

In conclusion, the mining industry is not against change. Indeed, our survival in recent years has depended on the need to change in the face of international competition that demanded the adoption of safer and more productive methods.

Our improvement in accident prevention is unsurpassed in Ontario industry and we have accomplished this by making changes voluntarily in the context of a changing workplace environment.

We ask that legislators and appointed officials recognize the uniqueness of our industry. We know our industry best and need to maintain the maximum degree of autonomy in the conduct of our affairs so that we can continue our efforts to make the Ontario mining industry among the healthiest and safest in the world. By the same token, we sincerely welcome the participation of labour representatives who wish to join MAPAO to actively work with us to further the cause of safety.

Finally, MAPAO seeks positive assurance that the very successful safety programs developed

for and delivered to the Ontario mining industry will be maintained and not cast aside in the sincere but potentially misguided zeal for change. Thank you for your attention.

The Chair: Thank you, Mr Ross. A number of members wish to ask some questions. I have one to start off. On page 4 of your brief you are talking about the different representation on your board from the different parts of the mining industry: gold, uranium, mixed metals; about eight different categories. If you only had five, even if you went from two to five labour representatives on your board, you could not have labour from each one of those categories from which you had management, could you?

Mr Ross: That is true arithmetically. We do not always have a board member from every industry although we are broadly represented on that basis. The structure has been to have labour representation from the two major unions and it has been their choice whom they would pick to have as a sitting member.

Mr Callahan: Your bylaws allow you to increase to up to 20 directors and even go beyond that for reading and resolution at general meetings. You said you have a 15-member board of directors, then you talk about having added two seats to be filled by labour. Are those two included within that 15?

Mr Ross: Yes, they are. We are constituted at a 15-member board, two of which are labour seats. We passed a resolution to increase the board size to a total of 20; that would be 13 management, five labour and two from the public. The final five were never adopted by the WCB and the governing body. However, the board was prepared to move to that position.

Mr Callahan: So you have a board heavily balanced in favour of management as opposed to labour.

Mr Ross: That is true.

Mr Wildman: I would like to follow up in two areas. The first one is in relation to the membership as we have just been discussing. On page 7 you make a recommendation that a worker on your board should not hold any other union office. Would you also agree that a management representative on the board should not hold any other management office?

Mr Ross: I do not know how you could be in management and not hold any office and have a job. There is a dichotomy there.

Mr Wildman: You might wonder how a representative of a union could in fact be shown to be representative if he had not been chosen to

represent members of the union, and if the members of the union chose to be represented by someone who had another union office, it should not be any of your business, should it?

Mr Ross: I think you are missing the point. The point we are making is that we are following the example recommended by Mr Burkett in his recommendations. To keep the adversarial relationship of common labour relations out of safety, it was recommended by Mr Burkett that union appointees to such matters not hold roles within the union that are deemed to be adversarial.

Mr Wildman: While I have great respect for Mr Burkett, to say that just because a person holds a union office, that necessarily means he is adversarial, the same could apply to management. I do not necessarily agree with that in terms of management.

You also go on to talk about nonunionized workers. You have indicated difficulty in getting organized labour to participate. I think, largely because of what my friend Mr Callahan indicated, it is weighted on the side of management. But you have had no problem, of course, in that regard in terms of nonunionized workers, so could you tell me how many nonunionized workers you have voluntarily put on your board?

Mr Ross: If you will notice, our board is structured to have representation from the two major unions. Up to this point the nonunionized workers were not invited. We invited the unions—mining, mill and steel—to submit members. So up to this point in time the nonunionized workers have not been represented.

Mr Wildman: So, if I understand you correctly, you were quite happy not to have nonunionized people on until the government suggested that unionized people should be equal to you in representation.

Mr Ross: No, I do not think that is quite true. I believe if you check back you will find that MAPAO responded to the recommendations of the Burkett commission, and if you have issue with that position, your issue would be with Mr Burkett, not with us.

Mr Wildman: Okay. The only other issue I would like to raise is with regard to the Ham commission which you referred to in dealing with the internal responsibility system. Would you agree that the reason Dr Ham was appointed by the government back in the mid 1970s was because of demand by labour, that in fact there was what might be called a wildcat strike in Elliot Lake because the workers were unhappy with

what they perceived to be management's unwillingness to improve the health and safety in the mines, and so they walked out, and that is what produced the Ham commission and the Ham commission's report?

Mr Ross: Yes, I would agree with that. Labour relations got in the way of safety in the early 1970s and safety matters were conducted in an adversarial relationship. Dr Ham very clearly enunciated that adversarial relationships have no place in health and safety, that the only way that true workplace safety can be built is based on co-operation. I think we have all gone through that. Those of us who worked in the industry during that time very well remember the very unsatisfactory workplace environment that was present. I certainly do.

Mr Wildman: The advances as a result of the work of the workers in Elliot Lake and elsewhere that led to Ham and so on have culminated in the negotiation, at Denison and Rio Algom and at Inco, of worker inspectors with the right to shut down an unsafe workplace unilaterally. Would you accept that that is working in those three mining company workplaces? And if it is, why is the mining industry opposed to having it extended to the rest of the mining industry and industry in general?

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Mr Ross: I cannot comment on Elliot Lake. I work in Sudbury. I do know something about worker inspectors. I can say that worker inspectors can be effective when both parties agree that the climate, the culture, if you will, within the workplace is ready for it. To impose it by government decree on what may be unwilling partners I would suggest to you will not work. It works in the mines that I am in. I have worker inspectors and they are very successful because there is a position of trust that has been established. As a mine manager I granted the unilateral right to shut down workplaces to my worker inspectors because I trust them. We have developed that position of trust over many years.

Mr Campbell: You include a letter in your attachment dated 1 May 1987. You do not include a response from Mr Gerard. Was there one?

Mr Ross: Yes, there was, certainly verbal, if not written. The response was negative. There were no labour members forthcoming.

Mr Campbell: Was it, as has been alluded to, that the unequal representation was the reason labour was not participating?

Mr Ross: That is correct.

Mr Campbell: I would like to explore a little further on the inspection. On your first slide you talk about compensable claims rate and a very dramatic improvement, if I read this chart correctly, even better than industry as a whole. It has been stated by my colleague across the way, Mr Wildman, about some of the questions of worker inspectors and so on. I take it this is the mining industry as a whole and not just the Sudbury example?

Mr Ross: No, it is the mining industry in Ontario.

Mr Campbell: If, as has been stated, only a few of the many northern mine sites are under the system I am familiar with at Inco, what do you attribute the general rate of decline in compensable claims to if they are not on the same system as you are? When I say "you" I mean Inco.

Mr Ross: I think it is an amalgam of many factors. The mining industry adopted a program called loss control. Loss control is an internationally recognized program. It is a very descriptive program in that it delves into some 500 items of running a business. The adoption of that program puts you on a path to investigating and understanding accidents and finding remedial measures.

The mining industry adopted that program in the mid 1970s and is now seeing the benefits of that. It has taken some years to mature, but we believe we are on the right track.

Mr Campbell: Okay. I understand that part of it. But if you are looking at factors in the workplace that contribute to this decline in rate, could you describe briefly the kinds of labour-management relationships that co-operate to look at the safety record in this way? Because obviously there has been an improvement and obviously it is not just one factor, it is a number of factors, and it is not only the Inco situation, it is a general industry trend. How would you see that, just in developing beyond the business lost and all of these other things, but right at the workplace?

Mr Ross: I think the mining industry has gone through some very difficult times in the last 10 years or so and has kind of pulled itself up by its bootstraps and has had a lot of support from the workers in the industry. Jobs around the line mines were threatened with closure, and that kind of air strengthens worker participation in safety programs and speaking of my own operations, I can tell you that the workers are extremely interested in improvements and will

work co-operatively with management. If you have that feeling of trust, and I think there has been an engenderment of that feeling of trust, then you get positive results, but you have to have programs in place to help it along and provide that road map.

Mr Campbell: You are providing, through your safety association, that kind of information both to management and labour?

Mr Ross: Yes.

Mr Campbell: The declining rate includes those mines that are nonunion.

Mr Ross: Yes, indeed.

Mr Campbell: It is the whole industry.

Mr Ross: Yes.

Mr Wiseman: Could I get a clarification? Not coming from a mining area, when Mr Wildman asked and the chairman asked about the makeup of the board on Bill 162 and now in this bill, I thought that maybe all of the mines were unionized, but maybe they are not. What percentage would you say are unionized compared to nonunion shops?

Mr Coughlan: About 85 per cent of the employees in the industry are covered by collective agreements.

Mr Wiseman: About 85 per cent would be unionized?

Mr Coughlan: Yes.

Mr Wiseman: It is just about the opposite to most other industries where probably two thirds to as high as 75 per cent are nonunionized.

Mr Coughlan: You need to understand that about five or six major companies have about 85 per cent of the people. If you add up Falconbridge, Inco, Rio Algom, Denison, Noranda and so on, you have covered off the majority.

Mr Wiseman: I was just trying to think, when you were questioned, why you did not have a nonunion person on there. There would not be that many in numbers in the mining industry compared to what we have been hearing from builders down in eastern Ontario and throughout the other parts of Ontario and others, where they said two thirds to as high as 75 per cent or 80 per cent were nonunionized. I just wanted to get it clear in my own mind. Like you said on Bill 162, one would think from the delegations that all mines were unionized, but I am glad to get your answer on that.

Mr Mackenzie: I would like to just confirm the actual numbers for your board and the number that are labour. Is it five out of 15, or five out of 17, or still two out of 15?

Mr Ross: We have no labour members on our board. We have officially two seats vacant.

Mr Mackenzie: Out of a 15-man board.

Mr Ross: Yes.

Mr Mackenzie: Regarding the motion to improve that or change it to five, did I hear you say it did not carry?

Mr Ross: It rests right now with the governing body of the Workers' Compensation Board and we have not received a positive response.

Mr Coughlan: We passed the resolution properly at our annual meeting in 1988. We handed the resolution along to the Workers' Compensation Board who, under section 123, have vested right of control in what we do, for its approval and furtherance to the Lieutenant Governor of the province for his signature.

At that time, as we understand from the Workers' Compensation Board, it was reluctant to hand it forward because of the changes that were coming down in the Occupational Health and Safety Act, so there it rests.

Mr Mackenzie: But in any case you will have, at best, a third of the people on that board who might be workers.

You made a comment that poor labour relations in the past got in the way of health and safety. There are an awful lot of people in your industry and other industries that would argue just exactly the reverse. One of the reasons for the Ham commission, the Burkett report and so on was the health and safety issue, and the drive towards internal responsibility has resulted, at least in your industry, in some real improvements. The very fact that you yourself say you have no difficulty in your operation with the unilateral right raises serious questions in my mind, given also the same kind of a story we got where the worker reps have the right, in the two or three mines that have contracts that way, why this right should not be extended to other workers. Why would they be any less responsible than your workers?

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Mr Ross: Let me clarify something you have said that is incorrect. The unilateral right to shut down work is not contained in our collective agreement with our worker reps. It was given by me, the manager, directly to the two worker reps.

Mr Mackenzie: Whether it is better still or not, at least you have accepted that they can have that responsibility.

Mr Ross: That is right. That came about because of a position of trust and maturity. That

is a long-standing growth and it fits our organization. I cannot suggest to you that it would fit everybody's organization where the culture is different.

Mr Mackenzie: Why, then, if we really are driving towards internal responsibility—and we have seen the first couple of bright spots, I guess. One of them was the Hydro brief just this past week, where they in effect said that in principle they were moving exactly that way and had re-evaluated their position on Bill 208. You have it working in some of the northern mines. You have accepted it yourself in yours. You say that you want internal responsibility, and yet we are operating with a board that at the moment has two out of 15 positions on it, if they took them, and I do not know how you really sell an internal responsibility system if there is not equality in the issue. It does seem to be reducing accidents, as well, where you seem to be heading that way in those contracts and those mines, however it came about that you got that situation.

Mr Carrington: Perhaps we are talking about two different issues. About the labour representation on the board, I think it is fair to say that at the time that labour chose not to participate any further we felt a bit frustrated and really did not know how to break the logjam. The move to increase to five was in our own minds the first step of a process that would ultimately go farther, but we were not getting any response and so there the matter lay.

The concern, as Graham said in the brief, is to have good quality representation on the board where there is confidence and respect for all people. I guess, like labour, we maybe felt a little bit concerned too much with things of the past.

Mr Mackenzie: I think you might start to get co-operation if it was really an equal distribution.

The Chair: Thank you, Mr Mackenzie. We are out of time. Mr Ross, Mr Carrington, Mr Coughlan, thank you for your presentation.

THUNDER BAY AND DISTRICT LABOUR COUNCIL

The Chair: The next presentation is from the Thunder Bay and District Labour Council, and friends.

Mr Campbell: My name is Don Campbell. I am the first vice-president of the Thunder Bay and District Labour Council. On my left is Wilf McIntyre, second vice-president of the same Thunder Bay Labour Council. On my right, Julie Davis from the Ontario Federation of Labour. She is the secretary-treasurer of that organiza-

tion. On her right, Bill Pointon from IWA-Canada, the national body. He is the fourth vice-president. The president of Local 2693, locally of IWA-Canada, Fred Miron.

First of all, I would like to stand in full support and agreement of the Ontario Federation of Labour brief that is going to be heard today, and then continue with our own.

Our first and foremost concern is that of workers, the needs and rights of the workers to a healthy and safe workplace. We are in a position where you have to say we demand a healthy and safe workplace for these people we represent. The rights and needs of workers and their families should be the first and foremost concern if the government says it cares about people. But what we have been seeing is a flow of bills that do anything but represent those needs. That is the problem we are having with the government of the day.

The employers, the associations that represent business, are constantly writing letters and lobbying and, worst of all, being listened to. For example, we have attached to our brief a letter from J. L. Thibault, the president of the Canadian Manufacturers' Association. It does not do good for labour, for the people we represent. It is anything but the interests and the needs of workers.

After introducing Bill 208, once again the pressure applied by industry to the government caused the removal of Greg Sorbara. We want safe and healthy workplaces in Ontario and the right to shut down, along with other provisions Bill 208 would help to accomplish. Industry says that labour will abuse that right; we say we will not. Industry opposed all the things that labour has in place today, such as pensions, health and safety. Now they say what we want will interfere with their right to manage. I think what they ought to do is take a look at the amount of days that were lost over the last number of years. Seven million work days were lost, costing many millions of dollars, due to deaths, injury and illness.

In a memo by Greg Sorbara on 24 January 1989 he said: "The current number and rate of workplace accidents and injuries in Ontario is unacceptable. So too, are the associated costs, both human and economic. If this situation is to be improved in a meaningful way, appropriate measures must be taken. These measures must aim at strengthening the joint responsibility and responsible participation of labour and management in the effective control of workplace risks."

The creator of Bill 208 obviously recognized workplace problems that exist, and so do we, and therefore we demand occupational health and safety regulations that address the needs of workers. We can only, therefore, conclude that a bipartite health and safety agency would be effective in determining the training requirements that we believe our joint health and safety committees should and must have.

Introducing a third party chairman or chairperson is telling us that joint committees do not work. Since the introduction of the Occupational Health and Safety Act in 1979, joint health and safety committees have mutually agreed to training, and reducing workplace hazards and subsequent deaths and injuries in unsafe workplaces. This is why we believe labour has taken a stand that a third party agency will do more harm than good.

Labour is saying that Bill 208 in its original form was a step in the right direction. Employers and organizations like the CMA say it is not. The Council of Ontario Construction Associations says that it knows more than workers. It opposes the right of a certified worker because it is unnecessary, damaging and creates potential for manipulation by unscrupulous workers.

Quite frankly, we are tired of seeing our government buckling to its knees at the whim of, and to serve the greeds and the needs of, what is referred to earlier as those unscrupulous tyrants we call employers and organizations like the CMA and COCA because they are one of its major campaign donators, which they are.

At some time this government was elected by the people for the people of Ontario and eventually it is going to have to start serving the needs of the people of Ontario, instead of the corporate people that it is trying to serve.

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Should the needs of workers not be met, which are simple, basic, human needs, the only remaining alternative is to rid ourselves of the problem at election time. That is a basic, fundamental right of people to do and that is exactly what we will have to do.

To conclude, I do not think we are asking too much when we ask for the health and safety programs in a workplace to protect the workers and to allow the continuity of family life in Ontario.

The Chair: Thank you, Mr Campbell.

IWA-CANADA

Mr Pointon: This is a draft submission of IWA-Canada to the standing committee on resources development concerning Bill 208, An

Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

IWA-Canada welcomes the opportunity of presenting our views on Bill 208 before the standing committee assembled here today. Before reviewing the contents of this submission, it may be useful to make a few brief, introductory remarks about our organization.

We are a national union in scope with approximately 55,000 members. While the majority of our membership lies primarily within western Canada, we have about 14,000 members situated in central, southern and northern Ontario. Within our Ontario membership, roughly 60 per cent are centralized in northern Ontario with local union offices in Kapuskasing and here in Thunder Bay.

The general makeup of employers with whom we hold bargaining rights are, in the main, industrial undertakings with much diversification of product and varying methods of product produced and with this diversification of industry emulates a complexity of problems relating to the safety and health of workers represented by our organization.

For example, stress that stems from machine noise, employer productivity demands, daily repetitive motion; health hazards resulting from continued use of toxic substances, finishing materials such as lacquers, fillers, etc, are in most cases attributable to the safety and well-being of those in industrial workplaces.

With the type of industry diversification existing within workplaces represented by us, it is only natural that matters of safety and health would be of utmost importance to our organization. Having made these brief comments, we now address Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act and indicate to the standing committee some of our concerns.

It is shocking when one realizes that the trend since 1979 is an increase of more than 30 per cent in serious lost-time injury claims, and since the same year the number of permanent disability claims have increased in excess of 100 per cent.

With this information available to us, it is difficult to comprehend why the government of the day would contemplate watering down its proposed Bill 208 or, in more specific terms, gutting its own bill. That is like saying to the trade unions and the general public at large that the government is not really concerned about the safety and health of workers. To us, it is viewed as a betrayal to the electorate of Ontario and once

again demonstrates its willingness to succumb to the wishes of the employer.

With the unacceptable numbers of lost-time injury and permanent disability claims, it gives further credence to the argument that the bill should be further strengthened and not weakened as the case would be if the amendments to the bill, as proposed by the Honourable Gerry Phillips, are enacted.

To ensure that the bill gives workers proper health and safety protection, our organization lends its full support to the proposed amendments advanced to the standing committee by the Ontario Federation of Labour.

Inasmuch as our organization represents a variance of industry diversification in the forest industry, which includes logging and manufacturing, we believe it essential to extend statistical information which will exemplify our concerns.

Information from the Forest Products Accident Prevention Association, FPAPA, indicates that in 1988 within the forestry industry there were two fatalities in central Ontario, one fatality in northeastern Ontario and four fatalities in northwestern Ontario. Over a 10-year period, from 1979 to 1988, there was a total of 89 fatalities within the forestry sector in Ontario. In the same period in logging alone there were in excess of 12,000 compensable injuries.

The attached information from FPAPA substantiates these statistics, as well as provides information on compensable injuries in all sectors of the forestry industry. This history of fatalities and compensable injuries is not acceptable to our union and we feel would be reduced substantially if Bill 208 as originally proposed, including the amendments put forward by the Ontario Federation of Labour, were enacted.

While we realize that the allotted time for the presentation of briefs prevents us from identifying all of our concerns, we would, however, like to identify a particular situation which took place within our union's jurisdiction which we believe could have been avoided had Bill 208, along with the OFL-proposed amendments, been in effect at that time.

Workers in a Brantford operation for some time had been exposed to isocyanates, which are supposed to be strictly regulated by the provincial government because of concerns about their effects on the health of workers. When inspectors from the Ontario Ministry of Labour were called in by the concerned workers, they were shocked by what they found. Isocyanates were observed on the floor, on the workers, including skin contact, and on their clothing.

Workers had not been advised by the employer of health problems resulting from exposure to this chemical or how to protect themselves. They were not given medical tests before beginning work in the isocyanate section or afterwards, as required by law. There was no ventilation or masks as required, no coveralls were used, and people were allowed to smoke in the lab. It was only when workers began to suffer breathing difficulties, rashes and other skin irritations that the union was notified and called in the ministry.

If Bill 208 had been in effect, there would have been a well-trained joint health and safety committee functioning in that workplace. Likewise, workers would have been informed of the problems of exposure to the chemical and would have utilized their right to refuse if not properly protected. In addition, the employer would have faced a large fine for ignoring the established regulations. Surely with this incident having happened, it is not difficult to understand why organizations such as ours would not want the safety and health of workers to be compromised.

The questions of the internal responsibility system and the failure of the system as identified by a survey carried out by the Minister of Labour's own advisory council revealed, for example, 78 per cent of Ontario workplaces are in violation of the act.

The idea of the internal responsibility system originates from the 1976 Report of the Royal Commission on the Health and Safety of Workers in Mines. However, the minister's own advisory council concluded, "The promise of improvement in the future wellbeing of workers implied in the royal commission report has, for the most part, gone unfulfilled."

The problem that the advisory council's survey identified was summed up in the following manner: "Another important concern is the issue of workers' ability to influence health and safety matters and the responsibility which would be attendant to increased worker influence." A number of our findings suggest that Ham's conclusions of 1976 still apply, that workers lack the ability to play a full role in the internal responsibility system.

An even more important difference is the variance between Ham's views of how the system should work and the Ministry of Labour's application of the system. Ham viewed it as a co-operative process involving all three parties. The Ontario government views implementation of the system and the committees as the first step in replacing government regulation with self-regulation.

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Considerable controversy has resulted from the current ministry's approach. Many workers have begun calling it the eternal responsibility system because of endless delays in obtaining enforcement.

While management supports the concept of self-regulation, we in the labour movement who are on the receiving end of such a system know that it does not work. Our members suffer injuries and deaths that are the results of a system which has failed. Only by developing strong regulations and enforcing them will the present unacceptable situation be improved.

In conclusion, we urge the committee to seriously consider our concerns and those of workers in general by supporting Bill 208 and the proposed amendments put forward by the OFL on behalf of the labour movement in Ontario.

Respectfully submitted on behalf of IWA-Canada.

ONTARIO FEDERATION OF LABOUR

Ms Davis: As the secretary-treasurer of the Ontario Federation of Labour, I am indeed pleased to appear before your committee once more to emphasize the need for the original Bill 208 and our amendments as proposed to this committee on 15 January of this year.

Over the last two weeks you have heard from employer representatives tales of abuse of the individual's right to refuse unsafe work. Most of these have been unsubstantiated by supporting evidence. We even had an employer state that his company had had only three refusals since the act came into effect in 1979, two of which he considered frivolous. Three work refusals in more than 10 years of experience. Well, to us those figures show more the hesitancy and intimidation that workers feel in using these rights than any evidence of widespread abuse. And we have more than 2,500 workers dead in the same period and more than four million injured who should have used their right to refuse.

The survey of joint committees carried out by the minister's advisory council found that 78 per cent of workplaces were in violation of the health and safety act, many of which would have justified a work refusal. The ministry itself has issued, on average between 1983-84 and 1987-88, more than 74,000 orders per year, many of which would have justified a work refusal, and more than 2,000 stop-work orders per year, all of which would justify a stop-work refusal.

And yet over that same five-year period, an average of 339 worker refusals per year required an investigation by the Ministry of Labour because of a first-step dispute. We do not know how many of those were actually denied by the ministry; however, we do know that the Ontario Labour Relations Board is not flooded with section-24 appeals because the workers have been found to have abused their rights. And, we might add, workers who do abuse these legislated rights have no protection under either the existing act or the proposed Bill 208.

From the auto industry and others you have heard about the number of cars lost to production as well as days lost to industrial disputes, but it is crucial that this be placed in context. Why are we not hearing employers in this province talk about the seven million days lost to production in 1978 due to occupational deaths, injuries and illness? That is seven times the number of days lost to industrial disputes in this province, according to the ministry's own background documents. Why are these employers not concerned about that lost production or the \$6 billion to \$10 billion that would have been spent in indirect costs associated with workplace deaths, injuries and illnesses? They do not talk about all of these costs, just as in Windsor you did not hear about the lost production due to quality control or inventory problems.

Most employers have told you that the individual right to refuse is not abused and in fact have stated that it is a necessary protection. Well, we agree, but we believe that what the minister intends to do both in the original Bill 208 and in his proposed amendments will in fact take us backwards from the present practice in our workplaces. The limitation on payment to first step only and the proposed restriction on the term "activity" is indeed a major step backwards from the practice of our employers, the ministry itself and the Ontario Labour Relations Board. Instead of moving forward to ensure that no other worker is assigned a refused job, as this government proposed to do several years ago, this government will in fact take us backward.

One of the most important principles which was established in the original Bill 208, the well-trained certified member's right to shut down an unsafe operation, will be gutted in the minister's proposal. We believe this is in direct response to the hysterical threats of an employer backlash by the likes of Laurent Thibault, John Bulloch and their peers. The right to shut down an unsafe operation is crucial to protecting

workers, and like the right to refuse, it will simply not be abused.

We have just received a final report of a research project into the operation of the Victorian legislation in Australia entitled *Victorian Occupational Health and Safety—An Assessment of Law in Transition*, carried out with funding by the Victorian Law Foundation, their Department of Labour and the Criminology Council. This study surveyed employers, inspectors and worker representatives, who have both the right to shut down or to issue work cessation notices and the right to issue provisional improvement orders to employers, a recommendation that we have made to deal with the less immediate dangers in the workplace.

When the Victorian legislation was passed, industry there engaged in hysterical warnings about its potential abuse, yet when this independent assessment looked at the work cessations involving inspectors because of a dispute, they found that out of a total of 30, 18 were upheld and only five were dismissed by the inspectors. The investigators concluded, "Again, and contrary to some prelegislation predictions, resort to work cessation does not appear to have been capricious."

The inspectors went on to conclude—and I believe it is important to read this section from their report, since it will remind this committee of the similar employer responses you encountered when you investigated the right to stop work in Sweden:

"That Victorian industry has not ground to a halt as a result of abuse of power by the health and safety representatives is now apparent to all parties. One representative of a major employer organization made this quite clear when he told us 'the expected upsurge in or anticipated upsurge in abuse and stopping the job at the drop of a hat has not occurred except in some isolated situations. It hasn't become the general trend.' This view was also shared by another colleague who felt that the 'concern about the way health and safety reps might have acted with the new powers have not come into fruition.'"

Your committee unanimously recommended a legislated right to shut down in the mining industry based on your findings from Sweden and from northern Ontario. Well, the same findings are now apparent in Australia.

The proposal to differentiate between good and bad employers is unworkable, as we have stated before. Joint agreement is what we have now. If your concern is the abuse of such a right due to bad industrial relations, why would you

suggest such a right where it is clear that the employer is not operating in the so-called partnership mode that the minister wants to foster with this bill and where industrial relations are bound to be bad?

The Liberals in this province made a commitment to working people with the signing of the accord that promised reform in occupational health and safety. If you betray this promise, labour in Ontario will have to take a very serious look at where we go from here.

Last week we held a conference with almost 500 delegates. The theme of that conference was *Bargaining Beyond the Legislative Minimums—Taking Health and Safety to the Bargaining Table*, to prepare our members to take our version of Bill 208 to the table. CUPE Local 1000, representing the workers of Ontario Hydro, has already negotiated the right to shut down, with full wage protection. This is, we believe, the first industrial workplace to go beyond the mining industry. Ontario Hydro is a corporation that some would say is close to the heart of the Legislature of Ontario and also one of the largest employers in this province.

If your final message to the workers of Ontario is that we are going to be on our own to negotiate our protection, how do you expect us to participate in a system that has fundamentally failed to recognize our needs? How do you expect us to be partners with employers in planning for future economic development when it will be clear that this government and our employers have no commitment to something as basic and fundamental as the protection of workers' rights?

You know that as legislators you have the power to amend this legislation and give workers in Ontario the protection they need and that, quite frankly, they deserve in order to protect themselves at work. You know that you have that power. We are here today to say we hope you have the courage to do so.

The Chair: Thank you, Ms Davis and colleagues, for a very interesting set of briefs. We have five minutes. I wonder if Mr Callahan and Mr Mackenzie could split those five minutes.

Mr Callahan: Very quickly, at page 2 you have indicated that you do not know how many of the worker refusals were denied by the ministry. Is that information not a matter of public record?

Ms Davis: If it is, I think we would have it.

Mr Callahan: So you are saying that you could not get that information. I think that is of extreme importance to your brief as well as to information for this committee.

Ms Davis: Let me just say that if we can, we will, and we will forward it.

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Mr Callahan: The second thing is that on page 6 you speak of the Victoria experience and you say that out of a total of 30, 18 were upheld and only five were dismissed. What happened to the rest of them?

Ms Davis: I believe they were settled.

Mr Callahan: Finally, you speak of Ontario Hydro's negotiated rights for workers in the workplace. We heard that in Kingston. What does labour think of that protection for workers?

Ms Davis: We think it is a step in the right direction, but what we need is legislation. First of all, not all workers are covered by collective agreements, and without legislation for those workplaces that do not have collective agreements, a lot of workers are going to be left unprotected. We have always believed that we speak not just for organized workers but for all workers in this province and that is why we need legislation. So while we commend Local 1000 and Ontario Hydro for taking that very important step in that particular workplace, that is not enough. We need more than that; we need legislation.

Mr Callahan: I recognize that you do not want to have it individually negotiated for the reasons you have stated, but my question to you was, what do you think of that protection as provided to Ontario Hydro workers?

Ms Davis: I think I answered your question. I said I thought it was a step in the right direction, but it needs to be backed up with legislation.

Mr Callahan: "A step in the right direction" does not tell me whether you approve of it or whether you think it should go further than that.

Ms Davis: I do not think it is up to me to approve it. That is up to the workers at Ontario Hydro and the union to decide whether or not it goes far enough. I commend them for having taken that step.

Mr Callahan: Does it go beyond the Ontario Federation of Labour suggestions?

Ms Davis: Yes.

Mr Callahan: So if it goes beyond the OFL directions, then I would presume that you endorse it more than just as a step forward, but you endorse it as being very exceptional.

Ms Davis: Yes, we think it is a major step forward.

Mr Callahan: Finally, it seems to me that the real acid test here is that you have employers, on

the one hand, saying that workers will capriciously use the right to refuse work that is dangerous and, on the other side of the coin, you have labour saying that they will not do it. Regardless of what happens with this legislation, the Ontario Hydro situation may very well prove to be a very interesting case to watch in terms of reducing the jitters by their employers and establishing that the workers were right, or the reverse. Would you not agree with me?

Ms Davis: Yes, except that we do not want an experiment; we want legislation.

The Chair: Five minutes has already gone. Sorry. Do you have a brief question, Mr Mackenzie?

Mr Mackenzie: I want to say that the three briefs are about as direct as could be possible. I am pleased that they have been presented to the committee.

In terms of Ontario Hydro—it was Toronto and not Kingston—we were told it was an agreement in principle, and the corporation also said that was the route it was going and it has not stopped. So I do not think we know totally what we have as yet.

My one question is to the IWA. I do not know whether any of the companies that you deal with are part of the Ontario Forest Industries Association.

Mr Miron: I believe some of them are, yes.

Mr Mackenzie: I was interested in their brief just the other day. Their conclusion was, "The member companies of OFIA are committed to a healthy and safe workplace and recognize the importance of the workplace partnership to fulfilment of this commitment." Then they go on in the course of their brief to oppose most of the things that workers want. They do not want to see the definition of work activity, do not want to see the certified workers' rep, have questions about the fine size increase, and have one very interesting comment that I wonder if you could comment on.

They agree with most of the amendments except they are not sure about the one that divides the workplace into good and bad employers. When it comes to bad employers their brief says, "The judgement, however, of workplaces with 'unacceptable' health and safety records and employer commitment which would remain subject to unilateral stop-work decisions"—so even if they are bad employers they do not want that—"is fraught with dangers. Health and safety records can be quantified for this purpose. Employer commitment, on the other hand, is a

quality that cannot be measured numerically." So in other words, you have to somehow or other find whether or not the employers have good intent, not whether the record was bad, even in a bad workplace. I am just wondering if you have any comment on their brief.

Mr Miron: I am hoping we have equal say when we sit on those committees. We will have something to say about those things and I think that is what is required. That is typically an employer viewpoint.

The Chair: Thank you, Mr Miron. Ms Davis, we thank you and your colleague Mr Campbell very much for your presentation this morning. It was comprehensive.

NORTHWESTERN ONTARIO BUILDING AND CONSTRUCTION TRADES COUNCIL

The Chair: The next presentation is from the Northwestern Ontario Building and Construction Trades Council. Gentlemen, we welcome you to the committee this morning. If you will introduce yourselves, we can proceed.

Mr Little: My name is Patrick Little. I am the president of the Northwestern Ontario Building and Construction Trades Council. With me today is Ron Taylor, who is the secretary-treasurer of our organization.

The Northwestern Ontario Building and Construction Trades Council appreciates this opportunity to submit our views on Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act, to the standing committee on resources development.

Our council represents construction workers in all sectors of the construction industry throughout northwestern and parts of northern Ontario.

Initially our council supported the proposed legislation, as we felt that a number of significant improvements to workplace health and safety were put forward. For example, construction workers would finally be entitled to joint health and safety committees, a right that had earlier been denied them; certified workers would have the right to stop dangerous work; and training agencies and safety associations would become bipartite: labour and management. In the construction industry these three changes were particularly important, first because the exclusion from the right to a joint committee discriminated against construction workers on the basis of perceived problems relating to project size and duration; second, because the number and locations of construction sites creates great difficulty in obtaining a government inspector within a reasonable time period when

an unsafe condition exists; and last, because of the difficulties the Provincial Building and Construction Trades Council of Ontario and its affiliates have had in obtaining equal representation on the Construction Safety Association of Ontario.

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Unfortunately, it now appears that the Minister of Labour has bowed to pressure exerted by the employer lobby against the original legislation and has proposed amendments that, particularly for the construction worker, negate the most important changes in Bill 208.

First, if joint health and safety committees are restricted to jobs of 20 or more workers and at least three months in duration, and if the definition of the employer is not the general contractor or project manager but is the subcontractor, then almost all construction sites in northwestern Ontario will have no joint health and safety committee and our construction workers will effectively remain excluded from this right which is afforded to other workers.

I guess the main problem that we see with that, from the standpoint of northwestern Ontario, is, again, the difference in project size here compared to areas such as Toronto. There are very few sites here that are large enough that if the total of the workers on that site is not taken into account, this right will just be a right on paper and not a right in reality.

For purposes of determining whether or not a joint health and safety committee is warranted, the total number of construction workers on site should be counted. In other words, the general contractor or project manager should be considered the employer, not the subcontractor.

Second, if a site must have 50 or more workers and be of at least six months in duration before a certified worker is required, then again almost all construction sites in northern and northwestern Ontario would be excluded from this benefit and consequently from the right to stop work. This is particularly difficult for construction workers in this area, as work sites are often hundreds of miles from the nearest government inspector and cannot be inspected within a reasonable amount of time.

Therefore, the right to stop work on a project, for all practical purposes, resides solely with the employer in this area. Construction sites of five or more workers should require a certified workers' representative or the right to stop work for unsafe conditions will be denied our workers.

Finally, if it is the Minister of Labour's stated intention to place a neutral chair on the governing

agency for training, then the bipartite nature of the original legislation is destroyed. Without going into the difficulty of finding a neutral person in this issue, what we perceive will happen is that this third party will in fact make all of the decisions regarding health and safety training and research in the province. The two principal parties, labour and management, will be relieved of the onus of responsibility in these matters, which is fundamental to the concept of the internal responsibility system envisaged not only in the original bill but in the act as it exists.

As we understand this concept, it has become apparent that it is impossible to hire enough inspectors or to create a bureaucracy large enough—if that were desirable—to police all work sites adequately. The idea is to avoid this unworkable situation by creating a system where the workplace parties take on this responsibility themselves. We agree and applaud this concept. However, if the concept of internal responsibility is to have any meaning whatsoever, the decision-making in and the responsibility for health and safety matters must remain with labour and management alone and the agency and the related associations must be truly bipartite in constitution.

As well as these primary concerns, we would like to comment further on the following aspects of the amended bill with regard to construction work:

Construction sites, because of their temporary and fluid nature, should be inspected weekly, not yearly;

There should be no exclusion of particular construction sectors, such as the residential sector, from the effects of the legislation. All construction workers deserve the same rights and protection extended by the act;

All members of the joint health and safety committee should come from the job site. Because of the varying conditions of these sites from day to day, anything else is ludicrous; and

Wages should be paid to all workers affected by a stop-work order. Workers on any given job site should not be penalized for the existence of an unsafe condition, a situation which could lead to hesitation in the reporting and correction of a hazard.

While our presentation is obviously focused on the effect of the amended legislation on construction workers in northern and northwestern Ontario, we would also like to affirm our support for the positions taken by the Provincial Building and Construction Trades Council of Ontario and the Ontario Federation of Labour.

While our brief may differ slightly in focus on specific issues, our overall analysis and conclusions are the same.

Originally, the proposed legislation created great interest among our affiliates. It appeared that finally the government was prepared to find real solutions to the problems of health and safety in the province and that, for the first time, construction workers would not be excluded from the benefits of the new legislation. We were therefore, with a few reservations, prepared to support Bill 208.

However, with the advent of the amendments to the bill which are now proposed, we can only express a combination of anger and regret over a lost opportunity to move health and safety issues in our province a giant step forward.

The Northwestern Ontario Building and Construction Trades Council strongly opposes the amended Bill 208 and calls for a complete re-evaluation of the government's position on this extremely important legislation.

The working people of Ontario have waited long enough for such legislation, and they deserve better.

Mr Wildman: Essentially, you are saying that because of the size of sites in northwestern Ontario, if it is 20 workers in three months you will not have any coverage.

Mr Little: It would depend on what the definition of "employer" is. If it is a general contractor, we then would have a reasonable chance at having that representation. If it is a subcontractor, there is no chance.

Mr Wildman: In terms of the residential sector, even if it were the general contractor, would that not still be a problem in many cases?

Mr Little: For the smaller contractors, definitely it would be a problem. Also, the other thing we are concerned about, of course, is how you determine whether a site is going to be three months in duration before it starts.

Mr Wildman: That is right. I guess you could only guess, in terms of the contract, when the projected completion date is going to be.

Mr Little: That is correct.

Mr Wildman: There might be all kinds of reasons why it might take longer than originally intended.

Mr Little: Absolutely.

Mr Wildman: In terms of work sites that are in more remote areas, unless you have trained certified worker members of the committee with the right to shut down, calling a Ministry of Labour inspector from Thunder Bay to some-

place in the far north just would not be an effective way of dealing with this problem, would it?

Mr Little: No. That is the situation we have now. Quite frankly, it does not have to be in the far north. It could be anywhere between Dryden and here. As I understand it, there are inspectors here and there is one in Dryden. That is 220 miles. It can be right on the highway; it does not have to be remote, is what I am saying.

Mr Wildman: It has been suggested by the government that this is a step forward because there are going to be more committees and more workers will have the right to committees. Do you think that is a significant step forward as long as management maintains the right to determine whether or not the committee's recommendations will be implemented?

Mr Little: Could you rephrase that for me? I am not quite sure what you are asking.

Mr Wildman: Okay. Right now the committee, where there are committees, can look at a hazardous situation and propose or make recommendations for ways of rectifying it, but it is still up to management to decide whether or not the recommendations of the committee will be implemented. The committee cannot require it to be implemented. So even if you get more committees, if the committees do not have the right to require that its recommendations be responded to, then really have you moved very much further forward?

Mr Little: There is no question that that is a problem. I think that we would, of course, like to not have the employer have that kind of power. However, if there is some monitoring from the government that will oversee that kind of abuse, then I would hope that it would be acceptable and workable. I guess that is the important part: that it be workable.

Mr Wiseman: On page 3, where you mentioned that "Construction sites of five or more workers should require a certified worker," I just go back to this past summer when my wife and I would be considered general contractors, but were only doing that once. We built a swimming pool and sometimes we had five people on the site: plumbers, electricians and carpenters. In each of those cases, and it must be the same in northern Ontario, they were all family. The carpenters were him and his son and his son-in-law; the electricians were two brothers. The chap who dug the foundation, it was him and his brother in a little general contractor's

business. The fellows who actually put in the pool were him and his son.

When you get down to five people, I just wondered if that figure is realistic, because in small jobs, and you probably have it in the north, they are done in the same way as mine and my wife's: in family units. I think, in that case, none of the ones I had working are going to do anything that would hinder or maim or hurt any of the workers because it was dad and son, and this sort of thing.

I just cannot follow, to be honest, that when you get down to five employees, five people on the job, that would be realistic and workable. And in the case of somebody building a house, or in my case building a pool, we would have had to—I would have had to, because I was subbing it all out to these people—appoint a safety inspector on the job.

Mr Little: I would hope, as the employer, that you would not be the one who was appointing that safety-certified worker. We intend on appointing him. I agree with you. There are difficulties with the smaller construction sites. It is a problem that we have been trying to come to grips with, both in terms of this certified worker and in terms of the joint health and safety committee.

However, the Occupational Health and Safety Act does apply to you as a constructor. It does not accept you because you happen to be a family operation. It is our feeling that all workers, regardless of the size of their job—in fact, we would like to see any job, period, being one that requires a certified worker. I can sympathize with your concern, but speaking as a representative of construction workers, I do not feel you should be excepted, nor should anyone be excepted, from any of the responsibilities of the Occupational Health and Safety Act.

1120

Mr Wiseman: We all talk about the number of labour inspectors. My goodness, you would need an army if you went down, in my opinion, to five on the job sites.

Mr Little: Excuse me, is it not the point of what we are trying to do here? Was that not the thrust of the original proposal: to get away from that huge bureaucracy of a supposed army of inspectors and that kind of thing, and get down to dealing with the people on the job, both management and labour? Again, that is why we asked that committee members come from the site, not from some outside agency or even from a company that might have a specialist who travels around. We want it coming from the job

site and get people involved in health and safety. I think that is the point. It is a workable situation.

Mr Wiseman: On the work stoppages you have had to date, I would imagine you have had to call in some labour representatives to settle the way it is now. I would be naïve to think that they will not be called in in the future. We have heard presentations where they need more. They are comparing them with the Ministry of Natural Resources conservation officers. There are some 170 of them.

Mr Little: There are more of those than there are health and safety inspectors.

Mr Wiseman: There are just a few labour inspectors, so they are calling for more labour inspectors.

Mr Little: The feeling I have about the overall picture is again, to go back to the whole concept of the internal responsibility system, supposedly making the people on the sites not only more active, but to make it a more workable situation than the one that stands in northwestern Ontario now, with the distances and the inability to get safety inspection. We heard all of the uproar from management, and we are closely associated with management. We are certainly completely divergent in terms of our opinion on these issues, but construction unions are constantly dealing with management in terms of dispatching workers to the job sites and that sort of thing. You may be aware of that.

So we have heard loud and clear their concerns about the right to refuse unsafe work: "They are going to be doing this, they are going to be doing that. You can't make your steward your safety representative because he is going to use the right to refuse unsafe work as a way to bully the contractor."

The facts are, sir, that in my experience in northwestern Ontario since that time we have not seen the right to refuse used on very many occasions. I myself cannot recall what was found to be a frivolous use of that right. Second, the most important part of it, from my standpoint, is that that right to refuse appears to have made the two parties onsite, management and labour, come to grips with those safety situations onsite, and rather than calling in an inspector and going through all of that kind of thing, they have been working it out on the site and those safety situations are being—

Mr Wiseman: I do not disagree with you on the larger sites, and you must have them up here where they are family-run plumbers and family-run electricians. The part I really find difficult to

accept is that you go down to five and any one of us on this committee has probably had some work done around home where there have been more than five, or five—maybe not all at once, but some days there would be, and I cannot see it having to be—

Mr Little: I agree that that does occur, but you are talking, I think, about the exception rather than the rule. Most construction does not take place with small family-run operations, at least in northwestern Ontario. It may be different in Toronto, but it certainly is not here.

Mr Wiseman: I am from eastern Ontario as well. However, I can sympathize with you on larger sites, but down to five, you lost me.

The Vice-Chair: One almost universal argument from the construction associations, with one or two exceptions, has been that somehow or other, if we go this route of worker representatives, we are creating a real problem because of an elite group in the construction industry. I am wondering whether you have any comments on this concern by the construction associations.

Mr Little: I am not too sure. I have not heard this one before. It was not the one I thought was coming. I do not know what you mean by an elite group, I am sorry.

The Vice-Chair: They say the danger is that everybody should have the health and safety training necessary and that, by going the route of the certified worker representatives, all we are doing is creating elitism, which will be resented, I guess, among the workers.

Mr Little: I do not think there is any great danger in that, from our standpoint, any more than you would call job stewards elite people or the safety representative we have now elite. I just think there should be, from our standpoint, an effective and workable situation. We do not have any fear of that and I am not aware of it in our area.

THUNDER BAY HOME BUILDERS ASSOCIATION

The Vice-Chair: I think the final presentation of the morning is the Thunder Bay Home Builders Association—Dave Specht, president; Roy Williams, past president.

Mr Specht: Roy Williams is not here this morning, but I just wanted to come up and say a few words and represent the home builders association and the small businessman of the community.

I am an employer, a general contractor, and we do employ a lot of, let's say, the subtrades. A lot

of them are private. Some of them are so small that they do not have employees, so they are sort of self-employed also, sort of like a big, long chain or ladder. What I would like to say is that safety on the job between employer and employee is very important to us because we work on a smaller scale and we try to get along together. If somebody has a complaint or if something is not right, we work on it and get something that is better, because in the long run it is cheaper to operate a business with the lower compensation cost and less this and less that. It all works together in the cost of construction.

But the way it is going now, legislating all these new things, if you have different people policing the cost, I do not know how much it would cost or how many additional people there would be when you legislate this Bill 208 through the WCB, etc, how much more it is going to cost us in the long run as an employer. Of course as an employer it costs more, so therefore to get the jobs—let's say it costs more—how long does it go before we run out of customers, period? Even from mines and all the way down the line, it all adds costs to the package.

1130

I feel that Canada as a whole is pricing itself right out of the market of almost everything because of so much regulation and so many rules. I feel a lot of times that the worker in his place can help also. If he sees something wrong with his fellow employee—a lot of them do not want to help each other either. I mean, it all works together, because I have been in heavy construction all my life. I worked across Canada, you know, from coast to coast and I have seen a lot of times where a fellow would get up in the morning, he has a hangover, he had a fight with his wife, he goes on a job and deliberately breaks something. He does not want to do his job but he is protected or whatever. I mean, who pays for that? Everybody pays for it. The cost of everything keeps on going up.

So I would just like to see a better understanding between employers and employees and I would like to see everybody sort of get along a little better together. I do not think the conflict should be there as much as it is today. I think we should have a better understanding of the situation. So maybe we can get a better job site for the future, because the way it is going, especially with the goods and services tax and everything else coming, I cannot see it going on for ever.

Mr Wiseman: Thank you for coming up when the other chap did not show up. Perhaps you were here when I was asking the presenters just before you where they mentioned—and you are a general contractor or a contractor in a small way—that a lot of the people on the jobs are small like yourself and this sort of thing. They were asking for construction workers down as low as five on a site to have a certified worker representative. Maybe you heard me mention how it gets down into even just repairs to our homes, or a new home, or if we went out and got people like yourself and others to come in, that we would be considered the general contractor.

Do you agree or disagree that it should be down as low as five employees? Are you finding that most of the people you deal with, like you said, are just one or two people and mostly families? So they are not deliberately going to go out and do something that hurts a member of their family or their loved ones. If it went down that low, would your company or yourself think that it is necessary?

Mr Specht: Necessary to have a certified person, you were saying?

Mr Wiseman: The presenters before felt that every work site of five and more should have a certified worker representative and that the general contractor on that site should be responsible for putting him in place.

Mr Specht: Maybe yes and no. It depends; let's see what type of work record they have had in the past if they have been in the existing company, but I only try to work on logic. The shorter the root, the fewer moving parts, the easier it should be. For most subcontractors, the less time they spend on a job, especially if it is a contract price, the more they are going to make. They want to do it properly so they do not have to go back, because every time you go back for something, it costs you more money. By doing a sloppy job where everybody is in the road of each other, the costs go up. I do not know, maybe in some cases a representative would be needed, but in most of our jobs I do not think we really need it because this is the way our jobs go.

The Chair: Mr Specht, thank you very much for standing in and making an appearance before the committee this morning.

That completes the presentations for the morning. There are tables reserved in the dining-room and I would encourage you to bring your bags down here before we start at 1:30.

The committee recessed at 1136.

AFTERNOON SITTING

The committee resumed at 1330.

The Chair: The standing committee on resources development will come to order, as we continue our look at Bill 208. We have a very full afternoon.

AMALGAMATED TRANSIT UNION,
CANADIAN COUNCIL, ONTARIO REGION

The Chair: The first presentation is from the Amalgamated Transit Union. Gentlemen, if you will introduce yourselves, I think you know that the ground rules are 30 minutes for each presentation. The brief that you are speaking to is 288A, the 51-page brief we are going to deal with in 30 minutes. Thank you for your presentation. We look forward to it. The next 30 minutes are yours.

Mr Foster: On behalf of the Amalgamated Transit Union and its members in Ontario, we thank you for allowing us the chance to appear before the committee to express our concerns. My name is Ken Foster. I am the executive secretary of the Amalgamated Transit Union, Canadian Council.

Mr Majesky: My name is Wally Majesky. I am a consultant who is in fact working with the ATU both at the Ontario level and with Local 103 in Toronto.

Before we start the brief, I just want to make a very quick point. The cover of the brief says that we say no to the amendments. That is quite a misnomer. Our concern is that we do not know what the amendments are. The release in October made some references to amendments. It is a disadvantage for us to talk about amendments when the minister is publicly making comments, and it is very hard for us to respond to that. If in fact amendments should somehow be tabled, we would be only too glad to address the amendments. So this presentation is in fact addressing Bill 208. It is very tough for us to think about what the amendments are or to presuppose whatever. Ken Foster will kick off the presentation.

Mr Foster: The Amalgamated Transit Union, Canadian Council, Ontario region represents 17,000 unionized transit workers. A sizeable portion of those members work in the public transit systems or in an intercity transportation system such as the Toronto Transit Commission. Our council members are also involved in providing public transportation in an intracity

context, such as GO Transit and Grey Coach. Currently, the Ontario region consists of 19 different locals, which represent 19 different cities in Ontario.

The present-day legislation, which held such promise, is often unenforceable and unions, ours included, in order to protect the health and safety of our members, have had to negotiate health and safety provisions into our collective agreements, provisions that should be our right by law.

Our council has been strongly supportive of the working concept of joint health and safety committees, with our members being forced to negotiate these provisions on an ad hoc basis because there is no legislative imperative compelling management to seriously participate in joint health and safety committees.

The Amalgamated Transit Union has fought to improve working conditions since its inception. In the days when horses were considered more valuable than workers, the Amalgamated Transit Union fought to improve the design of transit vehicles by having the operator's cab enclosed to prevent further deaths due to exposure.

In recent times, the ATU has participated in health and safety conferences and the development of a health and safety program for transit workers, as well as a drivers' health study and a study on operator assaults, to mention a few.

The political reality is that in the majority of the ATU workplaces or where ATU members work, there are no joint health and safety committees. For this very important reason alone, Bill 208, in its original incarnation at first reading, would have provided for the legislative and political mandate to force employers to set up joint health and safety committees.

On the question of occupational health and safety training, MPPs should not be lulled into thinking that labour and management live in a perfect world, because they do not. A very clear example of this is the simple and unmitigated fact that health and safety training is, in a practical sense, nonexistent in most transit workplaces. Second, the argument that this training should be provided by management trainers is totally unacceptable.

Third, the ATU has developed a top-notch 30-hour course, but at present the program is not accepted or seen by management as being an objective, relevant training manual. Thus, union members have to take this course on their own time, and the cost of training then is passed on

and absorbed by the ATU locals. This is not right.

I would like to just make an example on that, if I could. We developed this 30-hour health and safety training program, and it was developed by the Workers' Health and Safety Centre. Our members put in the time to write this particular course, and when it was completed, we then wrote letters to different ministries of the government: Skills Development, the Ministry of Labour and the Ministry of Transportation.

We were told it did not fall under Skills Development's criteria. The Ministry of Labour said there was no funding available and the Ministry of Transportation basically got hold of the Ontario Urban Transit Association people and asked if they saw this course and what they thought of it. We were then asked to send that particular course down to them and they reviewed it and did not like it.

The Ministry of Transportation then communicated with us and said that if we cannot work with management, then there is no funding available. So then we basically wrote back to the minister and said, "If there is no funding available because of the courses we develop, then why is there funding available for management programs when they did not consult with us?" That is basically where it stood.

Our union also has grave concerns around the question of jurisdiction. Many bus drivers see their bus as their actual workplace, but when our members complain about the question of unsafe buses, they are told that buses are under the Ministry of Transportation or the Highway Traffic Act. Therefore, Bill 208 and provincial health and safety legislation is not applicable, which is a major obstacle.

With respect to ergonomics or design of the workplace, one of the ways to stop unnecessary injuries in the workplace is the redesigning of the workplace. A case in point, which is especially germane for ATU members, is the design of cabs or how drivers operate the vehicle. The reality is that the ATU members are virtually never consulted about the ergonomics of the workplace.

A case in point is that there is a major ergonomic study under way being conducted into cabs, which is a federally and provincially funded study with the participation of 16 or 17 transit agencies. The union plays no role whatsoever, short of being brought in at the tail-end to endorse the findings of that report. This is tokenism at its worst and just political window dressing.

There are letters at the back of this brief. The Canadian Urban Transit Association and ourselves were supposed to be joint participants in that particular study. I think if you take time later and read those letters, you will understand the problems we are having with that particular problem.

Our union strongly supports the right to stop work as an essential ingredient to a working internal responsibility system where labour and management share equally in the teamwork and the partnership that the Minister of Labour wishes to foster and encourage.

The reality of management's rationale concerning stop-work is pure and unadulterated public relations hype. The reality is the workplace where thousands upon thousands of ATU members work, responsible ATU members who in fact are members of joint health and safety committees, have co-operated with management and have documented specific instances of dangerous working conditions endangering the health and safety of ATU members, only to find that these recommendations are passed on to another level of management which systematically takes these legitimate, documented instances of dangerous working conditions and bureaucratically stonewalls the process.

The results are that one of the largest ATU employers, as well as the smaller ones, successfully uses this management technique to effectively stall the recommendations of joint health and safety committees. The time frames are not days or weeks, but can take months or years or, in some instances, are never addressed.

That brings the ATU to another key point, and that is if joint health and safety committees are working on a co-operative model, then ATU recommendations should be addressed by management in some clearly defined time frames or time limits. Our experience is that this is not happening at the present time.

In addition, if we accept management's arguments, and this is a quote from the TTC brief that was presented to you as well: "Many ATU employers endeavour to respond to joint committee recommendations by the next committee meeting in 30 days." This is patently not true and, quite frankly, just a bureaucratic sleight of hand.

The fact of the matter is that management would like to retain flexibility and control. Thus, they tend to use the following language, again a quote from the TTC brief:

"Providing definitive responses to committee recommendations cannot always be guaranteed

within 30 days since clarification or further research, review and study is often needed; therefore, an implementation timetable and reason for disagreement should be qualified (where possible) in order to be reasonable and workable."

1340

The ATU totally rejects this type of rationale, which is a typical management response for the status quo. The reason we do not buy the management response to stop work is that the ATU members have historically been very reasonable and the price they have paid is that their lives are being threatened by unsafe working conditions.

If anybody has been unreasonable it has been management, which sees this as a bottom-line cost issue. Their rationale is predictable. In another quote from the TTC brief: "These proposals to Bill 208 would represent substantial cost to the employer with very little benefit in terms of improving overall health and safety in the workplace."

Quite clearly, ATU employers, management, are not much more than financial bean counters who are only interested in the financial viability of their corporation and, in the final analysis, pay little more than lipservice to the occupational health and safety needs of their employees.

In regard to paid preparation time for all joint health and safety committees, our council believes that there can be some flexibility in the process by allowing two alternatives. For example, one hour would be taken as time away from regular duties at the workplace or granted as premium or overtime pay for preparation time away from the workplace proper.

Management argues that certified representatives having the authority to decide whether or not they require more than one hour of preparation time is entirely unworkable and would prove disruptive and counterproductive from a manpower planning perspective. That is a typical response that health and safety comes at a price. They would sooner have the cost borne by injured workers, as opposed to some operational cost as a budget line in the accounting books.

That aside, once again management wants to provide limits to the ability of the certified representatives to perform their duties, especially in situations that may require extensive preparation or examination. Management also argues that the allocation of staff resources could have a very disruptive effect on the provision of transit service to the public. Our response is worker safety equals public safety.

Management also argues that because of the duties and responsibilities under the Occupational Health and Safety Act, workers are already at threshold understanding and preparedness to fulfil further duties prescribed in Bill 208. Again I go back to the TTC brief and I quote: "It is felt that the necessary preparation for joint committee members is an ongoing responsibility and an integrated component of each individual's working life."

The good Samaritan premise is a little faulty, especially if we consider the unique and ever-changing dynamic aspects of a person's workplace. Further, if we expect our certified worker representatives to operate in their capacity as transit operators, then we are in reality overtaking the physical and mental abilities of those individuals charged with the responsibility to serve as certified health and safety representatives. Maybe management wants burnt-out, tired, listless performances from union certified members, because if you do not provide ample preparation time, you can effectively make the certified representative system impotent from a union perspective.

The right to refuse: This amendment is aimed at a futuristic approach. It is the tort liability test. If you have reason to believe that an action will create another action which in fact would create a danger, then the first action should be stopped. That is what is called a tort law, the reasonable foreseeability test.

Our council echoes the position of the Ontario Federation of Labour, that no worker should be assigned a refused job until the issue is resolved. One of the problems now is that when a worker uses his or her right to refuse, the employer would simply assign another worker to do the job and often will assign someone new or an apprentice. The employer is required to inform the next worker of the refusal and he or she can also refuse, but because of this situation the worker may be intimidated.

The right to refuse is used in dangerous situations and our council believes that the job should stop until the problem is resolved. This amendment had been proposed by the ministry in its old Bill 106. The continued ability to assign another worker negates the purpose and effect of our right to refuse.

Mr Majesky: This other paragraph is kind of interesting. If we look at the aviation and automotive industries, when there is a concern that a mechanical failure, design or defect will hinder the reliability of a said vehicle, then

immediate recall and resolution of the problem is effected.

If the process is suitable in the preservation of our rights as public passengers and consumers in the aviation and automotive field, then the modus operandi should apply equally as well to public transit. As we said earlier in our brief, employee safety equals public safety. These two are inextricably related.

One of the things we wanted to bring to the attention of the committee—I just wanted to get through some points and I did not know where I was going to stop. What is really happening is, up until now, the ATU has in essence paid for its occupational health and safety training. The time has come when in fact this training has to be absorbed either by the government or by the employer. We think it is patently unfair that the union should carry the responsibility of training.

Second, it has become very apparent that the ATU wants to become a recognized equal partner in the whole area of workplace safety. The fact of the matter is, they are not partners in this whole process. The experience has been that when you go to management and get them to co-operate, there is still an antiquated attitude. You have this kind of master-servant relationship and the ATU, in many instances, is not seen as an equal partner in this whole process. This whole question of equality has to be legislated, has to be enforced. You cannot leave it up to the whims of management to see us as equal partners.

A couple of other things are happening that I think are very important. What is alarming is that the injuries and injury claims are rising. I want to comment on that as someone who spent a year and a half going around the province, as you have, on the whole question of vocational rehabilitation. What no one really talks about is everyone complains about the cost in pensions, everyone complains about cost of rehabilitation and employers complain about the per capita they have to pay to the Workers' Compensation Board.

The cornerstone of all of this is prevention. You do not wait for vocational rehabilitation and you do not wait for whatever. There is an alarming statistic—we all know what they are—of 434,000 claims. If we are going to come to grips with this great cost to everybody, human lives, cost to the employers, cost to the WCB, cost to the government, then you prevent it at source and you do not wait until the end to go around patching up human lives and whatever. A part of the brief addresses that and you as a committee and the government have to come to grips with

the whole question of prevention. If you do not prevent it at source, then the costs are monumental in the long term, so we think that is very, very important.

Ultimately, as the brief says, what happens in this whole process is that people tend to look at union members or ATU members as just being cogs in an industrial wheel. I spent a lot of time going around this province, not as a labour consultant but appointed by this government, by the way. Ironically, as a recommendation of this committee, I said to the chairperson that in one of the last acts, four or five years ago, the government wanted to look at vocational rehabilitation. There is a very sorry state of affairs in this province vis-à-vis the whole question of prevention. You are going to address that as a committee; you are going to have to address that whatever government amendments are coming though.

We think it is an integral part of the whole question of occupational health and safety. If you cannot do it at the prevention stage, then the rest of it is a monumental thing, in human terms, financial terms and whatever. That, as far as I am concerned, is a critical part of the whole question of occupational health and safety.

The Chair: Thank you, gentlemen. Mr Callahan.

Mr Callahan: On page 28 of your brief, the third full paragraph, you speak about an appeal system that should be established to determine the merits of individual complaints. I gather that you are talking there about the section dealing with the agency, where if it determines that a complaint was unwarranted, there is no further appeal beyond that. Is that what you are talking about?

Mr Foster: I think so, yes.

1350

Mr Callahan: I asked the staff to investigate whether or not that would be a needed provision in light of the Charter of Rights. I do not know whether we have got an answer to that yet or not.

Interjection: You asked the Ministry of Labour.

Mr Callahan: I asked the Ministry of Labour, I am sorry, yes. I do not know whether we have got an answer to that yet or not, but I can see that as a concern.

Mr Majesky: It may be. I never thought of it within the context of whether it would be a conflict.

Mr Callahan: We had a very interesting brief from Ontario Hydro in Kingston—maybe it was

Ottawa—where they address the question of right to refuse.

Mr Mackenzie: It was Toronto.

Mr Callahan: I think we also had a similar one—

Mr Marland: It does not matter; they are all the same.

Mr Callahan: Yes, that is right. They all came off the same word processor—where they had in fact negotiated through a collective agreement a definition which went somewhat towards your idea of the tort theory in terms of right to refuse. Have you seen that brief?

Mr Majesky: We have heard about it and it has been brought to our attention. I have not physically seen it so I cannot honestly say that I have seen the brief at all. We have heard about it. It has been passed to us by way of information.

Mr Callahan: You are familiar with the Ontario Federation of Labour's position?

Mr Majesky: Yes, we are.

Mr Callahan: This morning an executive member of the OFL indicated that the Ontario Hydro position was better than the OFL's position, so might I ask, do you agree with the OFL's position?

Mr Majesky: First, I am not too sure that the words of the OFL in fact said that the position of Hydro was better than the federation's position.

Mr Callahan: I heard that quite distinctly this morning.

Mr Majesky: I would have to read Hansard. There is no question that the Hydro position is a good position and, quite frankly, it should be a position that is applicable to the ATU and whatever. I am not one who believes that Hydro did it out of the magnanimity of its heart. There is another organization following this that will have something to say about how they came to that conclusion. But my answer would be that that position should be applicable to everyone in the trade union movement and should be applicable to the ATU members, that these people should in fact have that same right.

It is your obligation as legislators to make that kind of a right in legislation so everyone has it. One of the problems in the trade union movement is that some people have the economic bargaining clout to get that and, in fact, maybe this happened. There are some people who do not have that and so how do you negotiate that? Our position, mine anyway, is that that right should be legislated and everyone should have it. So that clause, quite frankly, should be applicable to

everyone and this government should implement it.

Mr Callahan: I think you have said you agree that the Hydro definition is a good one. I guess one of the big problems in terms of labour legislation particularly is that it took 10 years before it was brought back for amendment. I think that is probably a very serious concern of the working people, that it may be another 10 years. Certainly the Hydro provision, if examined and seen to work effectively and without the fears of management and the fears of labour, might very well be a testing ground for whether or not that provision itself is—and allay all the fears of everybody.

Mr Majesky: I feel very uncomfortable about answering on behalf of Hydro. The Canadian Union of Public Employees, Local 1000, is going to be right after me.

Mr Callahan: All right. I will ask them the question.

Mr Majesky: I am not ducking the question. These are people who know the process. All I am saying to you is that the principle that is there should be applied across the board. I do not want to get into whether it is good or whatever.

Mr Wildman: The position that you have put forward is quite clear. In terms of ergonomics, if, for instance, someone is driving a vehicle that is not well designed so that he or she has to reach too far for a lever, or to open the door or something like that, and if it were better designed so it would not involve having to reach too far, you might be able to avoid long-term strain. How do you react to the changes that are proposed in this legislation which would in fact limit the right to refuse, related to a work activity as opposed to something that is of an immediate danger? How do you think that will affect your workers, particularly as it relates to the ergonomics problems you were mentioning?

Mr Foster: It is a hard one to address because the problem we have is that the equipment that is used now—first, we have no input into the purchase of that equipment. We have tried many times in negotiations, through the health and safety committees, to have that right to at least have input. We are not saying that our word is final. But that has not been allowed up until now. We have people basically sitting in an office and the manufacturers will come to them with a certain piece of equipment. It does not matter whether it is ergonomically designed or whatever; it is the cost. If they can buy a particular seat for \$600, they will buy that seat. We can

certainly prove that fact because that is exactly what is being done.

We are getting very frustrated. When it comes down to injuries, we are always being confronted by management on lost time, absenteeism. It just boils down to the study that we did in regard to our drivers that the lost time and the absenteeism are due to the equipment. Finally, like the letter states that I indicated before, we finally sat down with the Canadian Urban Transit Association, which is basically the governing body of all transit properties in Canada, and they agreed to have us sit on a particular committee to have input directly into the new cab design of a bus.

Then finally they get the funding. They go through all the process of applying for the funding and whatever, and we are not included in that process, and then we finally get a letter from them saying that all this has been done; the time, the criteria for the study has all been set. Then what they do basically is tell us to wait for a phone call, the consultants will phone you and ask you what you think. We do not even know the questions we are going to be asked.

So it is very hard to speak in regard to the ergonomic part of it, because we are not being directly consulted on it. In fact, we are not being consulted at all.

Mr Mackenzie: Some years ago, I was involved for a while with some of the transit workers in Hamilton over a series of Workers' Compensation Board claims and back problems they were having that were specifically caused by, or had to do with, the adjustment of the way the seats were aligned on the bus. I remember at the time that they had not been able to get the company to agree on the changes that were necessary. I think subsequently, after a couple of rather serious WCB cases, they did. But is that what you are talking about, the discussion of the workers in terms of trying to decide on the equipment they use, right down to the seats that they drive in?

Mr Foster: Yes, exactly. That is right.

Mr Mackenzie: How about today, is there consultation on that now on those kinds of problems?

Mr Foster: In very few properties. In fact, in the city of Mississauga, for instance, they decided to go to a new seat design on a particular bus. But the only reason they went to that particular design was because in Montreal they had done an extensive study on a particular seat. At this conference that I attended with the transit association, they had this particular study there and it looked very good; all the test results and

everything else on that particular seat. We said that we would not mind seeing that seat somewhere in Ontario in one of the properties, so we could also test it and see the results.

I might just say that in the city of Mississauga they have got that particular seat there now and they have also got different designs in the bus cab which they adopted and it is improving. But as far as input directly to that particular seat; no, we have not been asked really.

Mrs Marland: Is that OBI, Ontario Bus Industries in Mississauga, Ontario buses?

Mr Foster: Yes, those are Orion buses.

The Chair: Mr Foster and Mr Majesky, thank you for your presentation.

1400

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1000

The Chair: The next presentation is from the Canadian Union of Public Employees, Local 1000. Gentlemen, welcome to the committee this afternoon. The next 30 minutes are yours.

Mr MacDonald: My name is Jack MacDonald. I am the president of Local 1000. On my right is Dave Shier, who is a full-time officer of our local union dealing with health and safety. To my left is Ted Nyman from northwestern Ontario; he is our trade representative on the provincial health and safety committee.

On behalf of our membership, I would like to thank the committee for allowing us the time to express some of our concerns regarding Bill 208. CUPE 1000 is a union that represents the workers at Ontario Hydro. We have a membership of 18,000. The workers we represent work in a large variety of occupations. Our members operate nuclear, hydraulic and thermal stations. They maintain the electrical distribution system across Ontario and also work in small offices in rural Ontario and the main office complex in Toronto. All regular employees of Ontario Hydro are members of Local 1000.

I might just add that within our membership we represent between 3,000 and 3,500 women doing a great variety of jobs. We also represent everything from helicopter pilots to research technicians and people who work outside the country on foreign projects in Korea, Romania and other places.

With the variety of jobs performed by our members, they face a large variety of workplace hazards. Local 1000 members face hazards ranging from falls, to electrocution, to radiological hazards and many more. Over the years,

several of our members have been killed or seriously maimed while performing their jobs. Several others have ended up with repetitive strain type injuries, which are naturally tied to their occupations.

Across the province of Ontario, our members are participating in 170 local joint health and safety committees. This translates into 350 union-appointed health and safety committee members. We also have several other committees that interface with the employer, Ontario Hydro, to deal with health and safety issues. We have a very good working relationship with Ontario Hydro, at least in health and safety. Some other issues are a little slow coming around, but we have a very good working relation with Hydro in regard to health and safety. It is accepted that it is a common goal of the parties to work towards improving the on-the-job safety of our members.

I would like to just add there, recognizing this and the possibility of watered-down legislation, this year we struck a bargaining agenda to try and resolve the problem if this current legislation did not deal with the issue as we saw it must. We will talk to that a little later.

All of the health and safety committee members, both union and management, receive a training course put on by the union. This training enables the joint committee members to be able to better fulfil their duties under the existing legislation. Originally, when the union started training only the union health and safety representatives, we faced a great deal of resentment when our trained health and safety representatives went back out into the field and dealt with untrained management personnel. That is when our joint training started. We agreed to joint training, which consisted of the union making the presentations and controlling the course content. We believe that was very advantageous and in the end both union and management had the same basic training, which enabled them to work quite a bit better together in the field.

With all the energies that the parties have exerted towards health and safety, our accident record is still too high. Our members are still being injured or killed at work. In the last six months two of our members have lost their lives at work; one member drowned and the other, a power line maintainer whose age was 26, fell from a pole. More of our members than ever are showing signs of repetitive strain type injuries. Other types of accidents also are on the increase. It is our opinion that the only way to reduce these tolls is to enact stronger legislation.

Local 1000 supports Bill 208. We believe, along with our fellow unionists at the Ontario Federation of Labour, that with labour's 19 recommendations of amendment this legislation would go a long way to reducing the number of workers who are killed or injured on the job in Ontario each year.

We would like to address the three major areas of concern to our members. The areas we wish to address are as follows: (1) the right to shut down work or the right to shut down an unsafe job; (2) one worker refuses a job, another worker should not be given the same job; and, (3) training of health and safety committee members and workers. It is our intention to expand on these areas and give you some practical examples of where amendments in these areas would help prevent and reduce accidents.

The first issue: the right to shut down. I would like to demonstrate to you how one of the amendments in Bill 208 would have possibly saved the life of one of our members last year. Not too far from here on a sunny morning last August one of our members, a person from Thunder Bay, 35-year-old Paul Lavergne, drowned while he was at work. While performing an inspection in a 9-foot diameter pipe he fell into a 14-inch drain line and drowned. Mr Lavergne was working at Kakabeka Falls, which is about 35 kilometres from here, when he fell into a drain hole in which he was unable to free himself, and since he was under water he drowned. The drain hole did not have a cover. The existing Occupational Health and Safety Act's industrial regulations require that this drain have a cover. If the law had been adhered to Mr Lavergne would be with us today.

How could Bill 208 have prevented this tragedy? The right of a certified member to shut down the job could have prevented this death. The structure where Mr Lavergne was working that fateful day had never been inspected by the Ministry of Labour. If it had, the hazard would have been identified and eliminated. Today those drains now have protective covers because of Mr Lavergne's death. The Ministry of Labour has since inspected the work location and issued orders to the employer to install drain grates. At the inquest into the death the Ministry of Labour inspector admitted that there were not enough inspectors to carry out the thorough inspection of all workplaces in the area.

To be able to shut down a job a health and safety committee member must be certified. Certification means training. The committee member under the Bill 208 proposal would

receive extensive training and therefore would be familiar with the industrial regulations and several other safety requirements. Had the certified committee member amendment been in place, this member, while performing his or her inspection function, would have identified the hazard and violation of the Occupational Health and Safety Act regulation. This would again have allowed Mr Lavergne to be with us today.

The individual right to refuse can help improve safety at work, but experience shows that workers are intimidated when they exercise their right. A trained certified member would be a lot less likely to be intimidated. Again referring to Mr Lavergne, two years prior to his death he had refused to perform the same work that claimed his life. If the certified member amendment had been in place he would have been able to shut down the job.

There are several other examples within our membership where a certified member could have prevented accidents. The fact that these people will receive extensive training will improve the safety awareness in their workplaces. As we have told you, the Ministry of Labour has admitted to not having a sufficient number of inspectors to enforce the safety legislation in Ontario's workplaces. The certified members will help fill this void and no doubt reduce the number of workplace fatalities and injuries.

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It is our belief that this amendment, the right to shut down, must be strengthened and remain in Bill 208. This right for workers will not be abused, as some business interests suggest. Since 1979, we have had the right to refuse unsafe work. Within our membership this right is used regularly. In the majority of cases, the concern is resolved by the workplace parties. In the last 12 years the Ministry of Labour has been called in on very few occasions to resolve work refusals at Ontario Hydro.

This amendment will force the workplace parties to deal with safety issues more seriously. It is our opinion that the ministry would only be called in on rare occasions to resolve workplace shutdowns.

Last week in Toronto our employer, Ontario Hydro, made a submission to the committee which indicated it had negotiated an authority-to-stop-work provision with Local 1000. I think they took all the credit themselves; nevertheless, they did make what we consider to be a very good presentation.

What started us on the road to that agreement was a meeting. Since 1988, we have had an understanding with Hydro, and in fact an agreement with Hydro, as to how our provincial occupational health committee shall meet. The terms of reference are clearly laid out. When we had the two deaths last year, we started to question whether or not we were being effective. We sent out a survey across the province to try to determine whether our joint health and safety committees were functioning as they should be.

In December of this year, because of our concern that the legislation might be watered down, we did put on our agenda an item to have the right to shut down work. It was on our collective bargaining agenda, which started in early December. At a subsequent meeting with senior management in December, we discussed whether or not issues like health and safety should be dealt with in an area of confrontation such as collective bargaining. It was at that forum and at that time that Ontario Hydro agreed to expand the terms of reference of our provincial health and safety committee to give it the right to negotiate a clause giving the certified workers the right to stop work.

I am glad to say that this has been concluded. We reached an agreement. We signed a midterm agreement to, first of all, allow that committee to expand its terms of reference to discuss this. We have in fact now signed an agreement to put this in place. We have signed an agreement of principle which clearly allows certified workers to stop work. It also provides that workers who are directly involved, or as a result of the work stoppage would be involved, will continue to get paid during the stoppage, and we are quite happy with that.

If any employer, such as Hydro, with approximately 220 workplaces across Ontario can live with the right-to-shut-down amendment, it is our opinion that other employers should as well. We request that you consider this provision and include it in your final draft of Bill 208.

The second issue we would like to raise is, if one worker refuses a job, another worker should not be given the same job. This concern is not addressed under Bill 208. The employer being allowed to give a job that has been refused because it was unsafe by one worker to another worker can be disastrous. It is our belief that if one worker had reason to believe a job was unsafe and exercised the right to refuse, the incident should be investigated and not given to another worker.

Many employers will intimidate other workers into accepting the job. The requirement to inform the other worker of the refusal by the first worker is abused by employers regularly. For example, in shift work situations a worker on the day shift refuses an unsafe job and the supervisor leaves the job for the next shift.

An amendment that will prevent a supervisor from giving a refused job to another worker will definitely improve safety in the workplace. We urge the committee to seriously consider this concern and address it in its final draft of Bill 208.

The third item is training. The existing legislation, as well as Bill 208, places the onus of health and safety training on the workplace parties. The local health and safety committees become the vehicle in which workplace health and safety issues can be resolved.

In order to be effective, these committees must receive training. Education is the key to ensuring that these committees fulfil their role under the law. Our union has been training the union-appointed representatives since 1979 and the management members of the committee since 1987. We have found that a trained committee is much more effective than an untrained committee.

Worker training is also a major step in preventing accidents. The legislation should mandate worker health and safety training on an annual basis. The two people having the most control of workplace accidents are the worker and his or her supervisor. These people should be trained, as a minimum, on their rights and duties under the law. Employers will argue that training is too expensive, but accidents are more expensive. The experts argue that one workplace fatality can cost an employer \$1 million. Worker training can cost much less.

Bill 208 mandates the health and safety agency to be responsible for educating the workplace safety committees. This section of the bill must be maintained and strengthened.

In conclusion, we have worked with the existing legislation to improve our members' safety in the workplace. As we indicated, we have 170 committees in operation across Ontario. The effectiveness of these committees varies from very good to poor. Our members are still being injured on the job at the same rate they always have been, as has been indicated in increasing numbers. This shows that the existing legislation requires improvement. We feel that Bill 208, plus labour's 19 amendments, will go a long way to improving workplace safety.

Our amendments place more power with workers. You must remember that it is the workers who are killed or injured at work, not their bosses or employers. Therefore, it is the workers who stands to lose when legislation does not protect them as it should. All of society stands to gain when less people are killed or injured on the job. The time has come to end the Ontario workplace carnage. The province of Ontario should take the lead and enact legislation that will truly help protect people at work.

We ask the committee to consider our submission and encourage you to produce a bill that will be very effective in improving the health and safety of our members and the other workers in Ontario. We ask for your support. Respectfully submitted by Local 1000.

The Chair: Thank you. You indicated on page 7, and we heard from Ontario Hydro in Toronto, that it negotiated with you the agreement to the stop-work provision, plus the fact that people would be paid if that was invoked. That was done, was it not, in the process of arriving at a collective bargaining agreement?

Mr MacDonald: It was not done directly at collective bargaining. We exchanged agendas with Ontario Hydro in November. We began two-party negotiations in early December. We are currently involved in those negotiations. We elected to take this very important issue out and deal with it on the side, where we were not talking about the \$500 million they owe us from pensions and we were not talking about the 14 per cent wage increase we need this time to keep pace.

We set it aside and dealt with it with our professionals who deal with this matter, and we were effective and able to come to a conclusion outside. We brought it back to bargaining and signed it off. Unlike any other issues you might settle in collective bargaining, we signed it off to be effective immediately, not when the contract expired and the new one began.

The Chair: That is exactly what I was coming to. You were able to arrive at this agreement on these issues without having to give anything else up in the part of the ongoing bargaining for an agreement.

Mr MacDonald: Certainly. I do not think anything was up for trade when it came to health and safety. We did not have any disagreement with the approach we took on this issue. Both parties were very interested in becoming more effective in health and safety and we were able to accomplish that.

Mr Callahan: I just want to go to the terms of that right to refuse which were contained in the Hydro contract. This morning I asked the Ontario Federation of Labour representative if she thought that was better than the OFL's proposal, and the answer I heard was yes. I guess we will have to check Hansard to be absolutely certain, but I asked it twice because I wanted to be sure that was the answer. Would you agree with that?

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Mr MacDonald: First of all, the issue that we settled is a singular issue that was dealt with by the OFL. I mean, we are looking for 19 amendments. This is one particular issue, the right to stop work.

Mr Callahan: That is all I am directing it to at the moment, their suggestions with reference to the right to refuse.

Mr MacDonald: I believe what we are attempting to do here is have the right for certified workers to stop work, and that is precisely my view of what we are after in the OFL brief.

Mr Callahan: So you are not really answering my question, though. I would like to know whether you agree with the OFL representative this morning that the definition or the parameters that were negotiated in the Hydro contract are better than what the OFL has offered. The OFL member, as far as I know, said yes, so I do not know why it is difficult for—

Mr MacDonald: We would have liked more. We got, I believe, what we were asking for, and I believe that they are as good as what the OFL would be prepared to accept. I am not saying they are better. I think that was precisely my understanding of what we were after, and we were able to succeed.

Mr Callahan: Let's put it this way, if those were to be the parameters, would you be content with them?

Mr MacDonald: I would be content as a member of the Ontario Federation of Labour. It would be up to the other people to see if they would be also.

Mr Callahan: You have obviously got it, because it was negotiated for you.

Mr MacDonald: I signed the agreement, so obviously I am certainly in favour. I was quite happy to sign it, as well. It was a major improvement.

Mr Mackenzie: Since Mr Callahan keeps raising this issue, maybe we had better deal with it just a bit more. Then I have one other question I

want to raise. The Hydro people certainly said this was in principle, and that is why I certainly was quick to congratulate them, because it was a breath of fresh air compared to most management presentations. They also indicated that this was not the end, that they were still working on this and that the whole internal responsibility system was what they were aiming for.

I should say also at the beginning that they did give you some credit. Since that time, and in light of the second reading of Bill 208, Ontario Hydro, through discussions with the Ontario Hydro employees' union, CUPE Local 1000 representatives, has re-evaluated this specific section of the proposed amendments. They were talking about the right to refuse there, and they said earlier that they had not been on side. They are now re-evaluating it. So they do not give you credit much beyond that, but they certainly give you credit for the re-evaluation and forcing them into it.

I do not want to take away from what they are saying, but in the four specific recommendations that they have made, number one is, where a workplace is unsafe, a certified union and management member of the local joint health and safety committee can jointly prevent the start of work or stop the work. I do not think that is officially the position of the OFL or most unions. Where they have coloured it a bit, or made it a little bit difficult to understand, are the second and third sections, which then indicate that you have the right unilaterally, although they have the word "imminent" in here, which may colour it a bit. So I think there is some question as to whether or not that negates the very first section, which is certainly not labour's position as I understand it.

But I want to ask you, with the suggestions they have made, the comments about the entire world changing and that people have to take a look at it; the fact that they did agree with you on a number of important issues, including the pay issue; the fact that they are saying we have to strengthen the internal responsibility system, do you feel fairly confident that what you are heading for is an agreement more in principle, or have you actually got the signed agreement now? They stressed it was in principle when they were talking to us.

Mr MacDonald: First of all, that document that you are reading from is signed. It has now subsequently been signed.

Mr Mackenzie: The one we had was not.

Mr MacDonald: I did also sign another midterm agreement, so it is in effect.

Mr Mackenzie: Very good. The other thing that I wanted to mention is, on page 9 of your brief you say: "Our union has been training the union-appointed representatives since 1979 and the management members of the committees since 1987. We have found that a trained committee is much more effective than an untrained committee."

I am wondering if the fact that you are training not only your own but management people, and now they have done what amounts to a re-evaluation of the position, a major corporation, semipublic I guess, in this province—I could add to that, I guess, Inco and some of the others—even though opposing the legislation, is now giving these additional rights to workers. Can you see any reason why this could not be legitimately passed on to other workers in the province of Ontario?

Mr MacDonald: I see no reason at all. I mean, we were reluctant and certainly sceptical when we went in. We wanted to train our own people. We did not believe that a training course slanted by management would be appropriate in health and safety.

As I told you earlier, when we initially trained our people, we trained 250 people at our own time and expense. The result was they went to the field, and they were then turning around and dealing with management, who were not trained, and there was a lot of resentment. It just did not work.

When management faced us and wanted to know if we were interested in joint training, there was so much distrust, we said, "Only if we have the right to develop the course and make the presentation." So we were training management people. Naturally the win for us is they were paying for the wages and expenses. But we were delivering it and they, after a while, found that we were presenting health and safety in a very unbiased way, with the interests of the worker at heart. It was not a union-slanted type of training; it was health and safety training. So they accepted that with no reluctance and now we continue to have joint training, with ourselves doing the delivery.

I think that kind of program can go anywhere in industry. It removes the concern you might have about slanted training.

Mr Mackenzie: Just before we leave this—I do not want to take any more time, because others may have questions—it is also fact then that while Hydro was still taking the position that it would not agree to the right to refuse or the gains that you have now made, it still had reached enough

trust that it was letting you—this was a couple of years before this agreement—train the management people in that safety and health program.

Mr MacDonald: That is right and, I think, the fact that we had not been abusing the individual right to refuse. We have some pretty touchy situations, as you know, in the nuclear setting and a lot of others. Our people take this business very seriously. I think we have proven to them that we do not deal with it frivolously. We are very serious about it and I think that has hit home. They accept us now.

Mr Wiseman: I would like to go back to pages 4 and 5 and the case of Mr Lavergne. You seemed to intimate that it was management's fault. From what you told Bob here, you have been training your people, not only the management but the labourers, since 1979, and on page 5 you said that Mr Lavergne had brought that to the attention of management. I would imagine if he did not get any results from management—I do not know how unions work, but I think I know how I feel they should work—would he not turn to his union and say, "This is an unsafe workplace"?

You have trainees whom you have trained, like you said. Why would you not have jumped in? Under the old legislation, that person had the right to refuse. Why would you not back him up, or if you did back him up, what happened? It just does not seem right that the man is fighting his employer alone when he is paying union dues.

Mr MacDonald: First of all, the employee was not fighting his employer alone. When I said this type of work came up in the past and it was refused, certainly what should have happened is the grate should have been put on and that situation should never have developed. I think our brief perhaps is not quite correct if it implies that Mr Lavergne was the individual who refused. In the work setting which he was a member of two years ago, it came up. Certainly our position is that there should have been an inspection done by a certified health and safety rep. That was not done.

Mr Wiseman: Did the union ask labour to come in and inspect that at that time, two years before the death, when it had those complaints by Mr Lavergne or whomever? It just seems to me that if you fought for the employee, as I feel unions should, that should never have happened, or you should have been able to bring in labour even under the old act.

Mr MacDonald: I can assure you that we have always fought for our members. Dave, my health and safety representative, was our representative at the inquest on this case. I would like to refer that answer to him.

The Chair: We will close off with that, Mr Wiseman.

Mr Shier: Just to clarify it, we just used this to kind of graphically show how we felt that certified member could have prevented that. The intention here was the emphasis on the training. The certified member training, as proposed under Bill 208, would be very extensive training. A person going through that type of training, which we had looked at drafts of and that we are involved with now with the employer looking at this type of training, will get a lot more training than what we are giving the joint health and safety committee members at this time.

What we are indicating there is that if the certified member had been in place, then these workplaces would have been inspected more and the person inspecting them would have been a lot more aware of the health and safety issues to look for. Hindsight is great, but we are saying that that person would have identified the hazard and it would have been eliminated. That is the implication we mean.

TRANSPORTATION-COMMUNICATIONS INTERNATIONAL UNION

The Chair: The next presentation is from the Transportation-Communications International Union. This is brief 288 being distributed. Gentlemen, welcome to the committee. We look forward to your presentation. I think you know that the rules are 30 minutes for each presentation. We are in your hands.

Mr Tierney: My name is Felix Tierney. On my right is Don Protz, who is the health and safety chairman, and on my extreme right is Don Hutsul, who is a member of our union.

Mr Hutsul: Before we continue with the presentation, I would like to welcome the committee to the city of Thunder Bay. Also I would like to make a brief statement. I was under the impression we were here to listen with sincerity to issues and concerns. Yet I have been watching with some great concern two supposedly intelligent gentlemen at the back laughing, giggling and whispering while the proceedings were going on. I must remind this committee that this is the same kind of mentality we are dealing with at the work site when we are trying to save lives.

Mr Tierney: We appreciate the opportunity to appear before the standing committee. At this time, we have about 1,150 members employed by the grain handling industry in Thunder Bay. They sit on 12 joint health and safety committees at the 80 grain elevators.

I would like to say, although it may not be apparent here, that we support the amendments proposed by the Ontario Federation of Labour and we have here the OFL amendments with additional personal examples.

I would like to start, if I may, with the first amendment and that is in regard to the inspection of the entire workplace once a month. We regard this inspection of the entire workplace as an essential tool in hazard inspection. I would like to use the example of the grain dust. This is viewed by some of our management as a byproduct in the cleaning of grain that we cannot avoid. On a monthly inspection, this is something that is noted with regard to the cleanup.

In fact, in some of our committees this inspection report has been used as a tool to take before management to let it see where adjustments are needed to the dust collection system. So we would like to see the amendment that the entire workplace be inspected once a month put in place. This of course varies from workplace to workplace. In some of the elevators the inspection takes half the day, whereas in some others it may take two days. It all depends on what the committee sees as essential.

We think it is essential that both labour and management members of the committee come from the workplace. We have had the experience of some of our union brothers sitting down arguing with an office manager over why it is necessary to modify a machine guard. We think it is far more productive to take a management member from the workplace and let him see why the modification is necessary and in effect cut out the middle man.

We also think it is important that the process of workers selecting their members continue. We cannot see the common sense behind management's in fact choosing the member who will receive the certified training.

On the amendment requiring the employer to respond within seven days, we feel it is important that joint committees, as I have noticed here, have adopted a complaint handling procedure and make them go through a step-by-step method. The first step of course is to refer the problem to the employee's immediate supervisor. If this is not resolved, then it is referred to the joint health and safety committee. If it is not

resolved at that point, it is referred to the plant superintendent. At that point I do not think anybody would disagree that a reply within seven days is certainly more productive to the workings of the committee. If we have to wait 30 days at that point, it becomes bad for morale.

On the question of technical advisers, we think that if we are to take an equal part in the internal responsibility system, we should have the right to bring in one of our union or an outside technical adviser. At this point we have 62 members on area joint health and safety committees and we find that a lot of them do not have the training required to do the job. It is important to have someone who can speak to them in layman's language. Again, I think it is only common sense that a new chemical that has not been present in a Canadian or North American workplace be tested before it is introduced into any workplace.

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One of the issues that we are concerned about is the right to refuse. We take the same position as some of the speakers you have earlier, that is, that when an employee refuses a job usually what happens is that the employer goes down the line asking another member to do it. This has particular reference to all workplaces where we are required to enter grain bins to clean them, what we call a hangup. It is usually caused when we have an accumulation of straw and chaff that gets hung up in the bin, preventing the movement of grain.

The employee is lowered into the bin on a bosun's chair. I do not know if all of you are familiar with a bosun's chair, but it is essentially a chair used on ships which has been modified for our use. The employee is lowered into the bin with a mechanical device. The hangup is then removed with a stick by poking it. Naturally a number of employees are reluctant to enter the bin for different reasons. What happens is that our employer goes down the line until he gets someone to enter.

A couple of years ago we proposed the idea of a mechanical device which would remove this hangup, but the cost was around \$5,000 at that time and the employer could not see that cost being justified for the amount of use that this device would get.

We know of at least one death that has been caused by this particular situation and that was when a 20-year-old man, on 2 October 1981 in Windsor, was working at the Windsor grain terminal at United Co-operatives of Ontario and he was doing essentially this same task. What happened was that the accumulation of grain

meal on the side of the bin came down, fell on him and smothered him. Here we have a situation where we feel this amendment is important. No worker should be assigned a refused job until the issue is resolved.

It has been mentioned too that a certified member may investigate a worker's complaint. We feel that if the internal responsibility system is to work and individual workers do not have to move to the last resort of refusing to work, then there must be a mechanism for their complaints to be investigated. If there is not a requirement on the certified member to investigate all complaints, then it is left to his or her discretion and can also be subjected to intimidation by the employer refusing to let the certified worker do the job.

At present, the union chairman of the joint health and safety committee at area elevators gets complaints from workers who feel that their concerns will be listened to, that some action will be taken to resolve issues where health and safety are at stake and corrective action must be immediate. We feel that this should continue and that the certified worker should be required to investigate all complaints. In many situations, the average committee member or supervisor does not have the training required to do an assessment of the hazard.

We also feel with the amendment that the certified worker should be able to issue provisional orders. We cannot understand why the ministry did not take the whole of the legislation from the state of Victoria. As I mentioned before, we do a monthly inspection of the workplace and potential hazards are brought to the attention of the joint committee, where equal labour and management members may disagree on whether it is a problem and consequently there is no resolution.

At various times this concern has been expressed by health and safety chairmen, some of whom share the opinion that the only way to get hazards attended to is to call in the inspector. We feel that this amendment would strengthen the internal responsibility system by encouraging the joint health and safety committee to solve problems on its own.

We are not at all comfortable with the new proposed health and safety agency being involved in disciplining workers. As the right to refuse works now, the employer can discipline a worker who misuses his or her right and then arbitration or the Ontario Labour Relations Board determines whether the discipline was

justified or not, with an onus on the employer to prove that it was.

We believe that a similar situation should exist for certified members as well. As Bill 208 stands now, not only could the agency issue discipline or a decertification for life, but the employer could also discipline or fire the certified member. We feel that such a double jeopardy is unfair, and certainly decertification for life is far too oppressive.

Regarding the fine, when a violation is discovered by an inspector we have noted that the construction safety branch inspectors can issue on-the-site citations for violations of the act or the regulations. Too often the other inspectors, we find, do not pursue the onerous task of gathering the evidence needed for prosecution unless the violation is very serious, so the employer gets only an order. Immediate fines or citations which can be appealed to the courts would provide the inspectors with an ability to force compliance with even minor requirements and would leave prosecution for the major ones.

Here again we are talking about the failure of the internal responsibility system in joint health and safety committees at area grain elevators. It seems that the majority of the companies are only interested in health and safety improvements when it does not cost them any money. Unfortunately, personalities also figure in the company's failure to make improvements. One case in particular concerns a union chairman who tried to get his company to make improvements to the dust collection system. The company regularly violated the safe level of 10 milligrams per cubic metre for airborne dust particles. This began in 1986 and despite orders issued by inspectors and hygiene monitoring, he claims that the dust levels still exceed regulated levels. We feel that an immediate citation or fine may have forced this employer to clean up his act.

We would also like to make a point on the amendment that would require our worker's centre and our two new clinics to become bipartite in their operation, as with the nine employer safety associations, including the Industrial Accident Prevention Association. We would urge this committee to approve an amendment, rather than pass an amendment, to section 10d of the bill which would enable our members on the bipartite workplace health and safety agency to determine the representation on the boards of directors of all the associations, the worker's centre and the clinics in an attempt to maintain the labour control over our centre and clinics.

We understand that in discussions prior to Bill 208, employers had expressed an interest in providing two training centres, one for labour and one for management. The safety associations could be rationalized and restructured into bipartite sectorial associations.

Our union members who have attended training workshops from the worker centre and the IAPA have commented on a different approach used by each group. The worker's centre programs are geared to health and safety from the worker's point of view—what it means to the person on the shop floor in practical terms, that is, what you can do to protect yourself from the hazards on the job through joint health and safety committees and the legislation. IAPA programs tell us that we have the knowhow; let's use it. In other words, it is only common sense to know how to take care of yourself at work, and if you get hurt, what were you doing wrong? This has been the experience of our members.

I would also like to comment on the fact that the public sector workers are limited or exempted from the right to refuse and the right to stop work. We have noticed that in the present act and Bill 208 correctional officers, police and firefighters are exempted from the individual right to refuse and the right to stop work. A case that made the news last year concerned a young woman who was murdered in a group home in Midland by one of the residents. She was working alone. She should have had an individual right to refuse to work alone in a clearly dangerous situation. These workers are trained and will use their rights responsibly. They will not refuse to fight fires, to fight crime or to guard inmates, but they should not have to commit suicide either.

1450

In the present act and Bill 208, health care workers have a limited right to refuse unsafe work and to stop work only when they do not place another person in imminent jeopardy. In the ongoing inquest into the crash of a passenger jet at Dryden, Ontario last year in March, it has been ascertained that failure to de-ice was a factor in the crash that killed most of the crew and many passengers. We feel that if the air flight attendant who survived had been able to stop work and get the plane de-iced before takeoff, the crash resulting in many deaths may not have occurred.

Again, health care workers go into health care to help people, not to refuse to work, but cutbacks in health care have left health care workers alone in trying to lift patients or to deal with potentially violent patients by themselves,

and they should be able to refuse in order to get help.

We have some concerns about a worker stopping work and the management member coming along and starting it back up again. We feel this does not make any sense. I think one of the presenters mentioned earlier that the latest amendment concerns the management member and the worker member getting together in order to agree to stop work. This is something we feel just will not happen. We feel that will not happen voluntarily, anyway. We feel that there should be an amendment that ensures there is an agreement between the labour and management certified members, or the inspector must be called in before a stop-work order is cancelled.

In the present act and Bill 208, workers who are unable to work because of an individual refusing to work or as a result of a stop-work order from either an inspector or a certified member lose pay, while the person actually refusing or stopping work is guaranteed some payment. Needless to say, this puts tremendous peer pressure on workers not to use their rights. If a refusal or stop work order is upheld by the inspector, surely the affected workers should be paid.

The employer is responsible for maintaining a safe and healthy workplace, and if it takes an individual refusal or a stop-work order from a certified member to ensure that the unsafe conditions are addressed, workers should not have to suffer a double jeopardy of being at risk and also suffering wage loss when they attempt to correct the situation.

We also note that farm workers continue to be exempted from the protection of the act, yet it is clear that farming is very dangerous and with the use of chemical pesticides and herbicides, farm workers are showing increased incidence of cancer and other toxic effects.

Our members are also very concerned about the effects of pesticides and herbicides, as both are used in the treatment of grain at area elevators. We have strict conditions governing their use and we feel it is time that our brothers and sisters in farm work enjoyed the protection we take for granted.

We also note that Bill 208 does not alter the appeal system provided in section 32 of the present act. We must appeal to the director of appeals who is not independent since she is located in the Ministry of Labour. We need an amendment that provides for an independent appeals body that offers a simple and quick resolution to both workers and management who

seek appeals against any inspector's orders or failure to issue orders.

When a worker suffers a reprisal and the Ontario Labour Relations Board determines that it was not justified, it is clear that the employer has violated section 24 of the act, and yet at present the ministry does not prosecute employers for violating section 24.

We know of situations where an employer has deliberately not paid a worker who refused unsafe work just to intimidate the workforce. When the Ontario Labour Relations Board ruled that the employer had acted improperly and must pay the worker, the employer finally complied many months later, and yet the employer suffered no reprisal for such a clear violation of the act. We need an amendment that ensures section 24 violations are also subject to prosecution.

We agree with the amendment proposed by—I think it was—the person from the Northwestern Ontario Building and Construction Trades, that there should be an amendment in regard to representation on construction sites. A case in point is the recent death of a local employee at the Abitibi-Price Mission Mill in Thunder Bay. The accident occurred on 8 January of this year when the worker was installing sheeting. An inquest has been ordered into the circumstances, but we know that one side of the swing stage collapsed, resulting in the worker falling 50 feet to his death.

Now, we do not know who was at fault here. We know that the worker was not secured to a safety line. We feel that the presence of a health and safety representative may have saved his life. We feel that the requirements should be amended to “with not less than five employees and lasting up to three months.” Just to clarify that, we feel that our health and safety rep should be on the job when there are at least five workers on any construction site.

In conclusion, we would like to say that we are appalled by the 339 deaths that occurred last year in Ontario, and the 434,997 injury claims. We ask this committee to consider that one worker was killed and more than 1,800 were injured every working day last year, and if this is an acceptable standard of doing business in Ontario. We ask you to take the extra steps that will ensure safe and healthy workplaces in Ontario. We ask for your support.

The Chair: Thank you, Mr Tierney, for a very comprehensive brief. We only have five minutes left.

Mr Campbell: I will respect the brevity of my time left. Could you tell us, do you represent farm workers and other people you mentioned here, or is this general support of other briefs?

Mr Tierney: We do not represent farm workers, but we do generally come out and support them being included in the provisions of the act.

Mr Campbell: Am I not correct in saying that in the Dryden situation federal labour law would apply because it was an airline that was crossing and the right to refuse work would not be allowed under federal statutes?

Mr Tierney: At this point the right to stop work would not be extended to workers under federal legislation, but the pattern has been that the legislation adopted by the province has been subsequently adopted by the federal departments.

Mr Campbell: Okay. I have one other question. On page 3 when you talk about bringing technical advisers on, is that like a consultant who may be more versed in the particular problem, that some of your workers may not, on the job site, have enough information to make a decision?

Mr Tierney: It could be someone from our union. It could be someone from our workers centre in Thunder Bay who may have more information, who would help our members to understand what was involved.

Mr Campbell: I see.

Mr Wildman: You may have heard the presentation that was made just immediately prior to yours by CUPE Local 1000. They talked about what they have negotiated with their employer, Ontario Hydro. Essentially what the president of CUPE Local 1000 told us was that after the October speech by the minister, in which it had been indicated there was going to be a watering down of Bill 208, their union decided they had better get this on the bargaining table and get something negotiated with their employer to get it in place in their collective agreement, because it did not look like it was going to be passed into law.

My question is, do you as trade unionists think health and safety should have to be protected through the give and take at the bargaining table rather than having it legislated to cover all workers in the province?

Mr Tierney: I say a definite no. I think you get back to the definition of the golden rule, and that is, he who has the gold makes the rules. We found in bargaining with our employers that

where they have a sense of power, then they dictate the terms. I do not think health and safety should be subject to bargaining.

1500

Mr Protz: We have been forced to bargain for some of the basic structure within which our health and safety system operates successfully because of steps backward caused by the new amendments. Right now I think that our system, our framework, with monthly inspections is just operating and we are managing to make improvements. Without such items or such structure in place, we will be forced to the bargaining table and we are going to have a lot of problems.

We are going to have a lot of strikes. We are going to have a lot of labour interruptions. Morale, productivity is going to go down. We are going to have a lot of problems unless we have a basic structure. Most of the time our system operates well because we have pressure from a government agency, and everybody understands that we have pressure in place because we have somebody we can turn to if we have an impasse, and we can get it resolved rather quickly. I think that is very necessary.

Mr Wiseman: On page 7, just so I know, is a union chairman the same as a chairman of any other board? Is that the top person in the union? You mention that a union chairman tried to bring the dust levels and everything to the attention of the company, I would take it, and that it has been going on for about two years. You say "inspectors" and "hygiene monitoring," but you do not say whether those inspectors were the Ministry of Labour inspectors. You say a little farther down that a citation or a fine might have cleared things up.

Why, if it has been going on for two years, and under even the old act, have you not got the worker to refuse to work until it is cleaned up? I do not care and maybe I am naïve, but if it is Bill 208 or it is what is there now, if you do not support your workers and if it is the chairman of the union who has found this, what the dickens is going to happen under any bill? I think you have had the right to go after the Ministry of Labour to follow up on that, and if it is a hazard, why have you not got the worker to refuse to work?

Mr Hutsul: The problem with that situation is that the company, for some reason, finds it very easy to lay people off. Once you have 40 people out of 50 laid off, and 10 people working, they are basically taken away from that certain section of the worksite, working in another place, and they just consistently shuffle people from one plant to another plant. You do not have the same

people at that one station. It is very hard to keep track of it.

The Chair: We really are out of time, so Mr Protz, Mr Tierney, Mr Hutsul, we thank you very much for your presentation. It was a very good one.

UNITED STEELWORKERS OF AMERICA,
NORTHWESTERN ONTARIO AREA
COUNCIL

The Chair: The next presentation is from the United Steelworkers. Gentlemen, we welcome you to the committee. I certainly recognize a couple of you. If you would introduce yourselves to us, we can proceed for the next 30 minutes.

Mr Kempton: Good afternoon. My name is Jim Kempton and with me are Rob Smith, our staff representative Moses Sheppard, and Francis Bell. We represent approximately 200 steelworkers, Rob and I, from Local 5055 working for Port Arthur Shipbuilding Co. here in Thunder Bay.

We thank you for the opportunity to present our views on Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

It has been 10 long years since we in the labour movement have had something that we believe would protect us from accidents and deaths.

In February 1987, NDP MPP Elie Martel's private member's Bill 149 passed second reading in the Legislature. Bill 149 truly had the workers' interests in health and safety, but sadly died even after NDP leader Bob Rae reintroduced it into the Legislature.

When the previous Minister of Labour, Greg Sorbara, introduced the original Bill 208 in January 1989, we in the United Steelworkers welcomed it even though we believed the amendments did not go far enough. It was a start with a promise of becoming better by consultation with other labour organizations, along with government participation.

This new, improved Bill 208 proposed by the present Minister of Labour, Gerry Phillips, has only one point that our local can support in principle.

We have a rather unique situation at the shipyard. The present bill, in its explanatory notes in the introduction under section 1, subsection 6, will clarify the jurisdictional dispute regarding the present federal and provincial legislation governing the shipyards. It reads, "A ship under construction or under repair will be treated as a project and will be subject to the

provisions of the act and the regulations that relate to construction projects."

This must remain intact so that we have some guidance in relationship to the regulations that will apply to us working on a ship under construction or repair anywhere on the Portship property.

In the early 1980s the Ministry of Labour, responding to the joint concerns of the union and the company concerning work being done on a ship in drydock being either in federal or provincial jurisdictions issued a legal guideline. Any ship repair or construction, while in drydock, would be governed by provincial industrial regulations.

On 18 February 1983 three of our members were burned to death, and on 1 June 1983, one of our members and his foreman were electrocuted. The subsequent charges under the Occupational Health and Safety Act of 1979 were dismissed because the court decided in favour of Portship's legal argument that a ship in drydock could not be considered "an industrial establishment" under existing provincial legislation. This decision was challenged, but it was upheld.

Clearly, we need to know what to do to protect our workers in all situations and that process ought not to be bastardized by things such as jurisdictional disputes.

We also discovered another jurisdictional dispute unique to the shipyards. There have been instances in the past when a ship was in drydock undergoing repairs when one of our members had a discharge of raw sewage dumped on his person. This, however, was not an isolated incident; it has happened to other workers in the past. We are sure this committee has never experienced such a disgusting act. When our local union undertook an investigation as to what provincial or federal responsibilities covered the dumping of raw sewage, no agency could give us a satisfactory answer.

Mr Smith: If Bill 208 would give a certified worker member the right to shut down this disgusting aspect of work without fear of his orders being countermanded by his company counterpart, it would certainly give him, herself or any other worker better protection from personal harm and ill health.

Why should our families have to worry every day if we are going to return home safe from injury and/or death?

1510

We are sure this committee does not need to be reminded that there have been, up to and including 30 November 1989, 339 worker death

claims submitted to the Workers' Compensation Board, 272 of which have been recognized. There have also been four million workers injured on the job since the present act came into effect in 1979. What bothers us is the trend to serious injuries. Since 1979, serious lost-time claims have increased more than 30 per cent. Since 1979, disability claims have increased more than 100 per cent.

According to the ministry's own survey of 3,000 joint health and safety committees, reliance on the internal responsibility system is not working. Our concern is the issue of a worker's ability to influence health and safety matters, and the responsibility should be to increase worker influence. The conclusion of the Ham commission of 1976 still applies, "That workers lack the ability to play a full role in the internal responsibility system."

In closing, we would like to deal with the issue of our participation before committees like these. We find that these committees are albatrosses around our necks and monkeys on our backs. In a ceaseless progression of briefs such as these from time immemorial on issues as varied as health and safety, the WCB and single-industry towns, etc, we as labour representatives and delegates have appeared before you and laid out our cases, sometimes in favour, sometimes in favour with amendments, sometimes arguing positive and negative aspects of certain language, but mostly in horror and disgust at the situations that will come to pass if certain clauses and language are not changed which will cause workers undue hardship and unfairness in their daily lives in and out of their respective workplaces.

It is with anger and frustration in our hearts that we feel all of labour's participation in the process of Bill 208's history is for naught. Bill 208 will pass in its present form, gutted by one of industry's most concerted efforts against further worker involvement in decisions affecting their own health and safety in the workplace.

We urge you to withdraw Bill 208, keeping only, with respect, the amendment contained in subsection 1(6), which should stay intact. We also feel however, in the strongest terms possible, that such an amendment should have been passed immediately after the court case making a ship in drydock not an "industrial establishment," and not allowing the potential for such accidents to happen again and causing workers to have no legal option against a culpable employer.

With respect, we urge you to reconsider private member's Bill 149 by former New

Democratic Party MPP Elie Martel as the logical starting point for bringing about true and beneficial changes to existing health and safety legislation in the province of Ontario. Then we can truly say that in Ontario we have the leading jurisdiction in health and safety in North America, as this is the goal that the Honourable Gerry Phillips wants to achieve.

Mr Kempton: If you take a look, we have an appendix to our brief. This is a copy of the letter, dated 9 November 1981, concerning the legal guidelines that we mentioned. Also, our company or employer, Port Arthur Shipbuilding, has issued a brief—the company did not receive standing before this committee—with its stand similar to ours concerning the jurisdictional disputes. I would like you to consider that when you read our brief.

Mr Riddell: You think you are frustrated. I have such a hell of a time getting on the chairman's pecking order that I am soon going to exercise my right to refuse further discipline on this committee.

However, that being said, there is kind of a general question I have been wanting to ask previous presenters and I am going to put it to you people. This committee is saddled with the responsibility of listening to all concerns and then weighing the merits of the recommendations to address those concerns. One of the concerns that we hear business making time after time is the stop-work part of the act. Some businesses will even go so far as to say that it may well put them out of business.

The car manufacturers tell us that if the line was shut down for an hour it would mean 100 cars or more that would not get built. We also hear that there are potential investors who would like to establish business in the province, but when they see the obstacles that we as governments put before them and then they see in Bill 208 where a worker can shut down a plant, they say, "We do not need the hassle."

I firmly believe that workers should have the right to participate. They must have the right to participate, they must have the right to know and they must have the right to refuse, which means that workers must receive education and training. I really believe that workers should have that—I am not even sure it is an option. I really think it should be mandatory that workers do receive some education and training.

Mr Kempton: I think it should be too.

Mr Riddell: If that is the case, if we were to tighten up on the right-to-refuse part of the bill, in other words, if we were to make sure that no

employer could put somebody into a workplace that a former employee had refused to work in and if we made it an offence for the employer to intimidate the worker not to exercise his right to refuse, do we really need then—

Mr Kempton: I believe that is already an offence under section 24 of the act.

Mr Smith: We already have it.

Mr Riddell: I guess my question is, why then do we need the stop-work? Why do we need one certified worker rep to be able to shut a plant down? If I, as an employee who has received the training, know whether the workplace is safe or not and I refuse, knowing that I cannot be intimidated by the employer, because we could tighten that part of the act up, knowing that it would be an offence if the employer did intimidate me, why would the right to refuse not suffice? Why do we have to go to stop-work if indeed that is the thing that is making foreign investors say, "I am not going to come into this province to set up business if I am going to have to be faced with a stop-work by a worker"?

Mr Kempton: Those are precisely the same arguments that were handed out when Bill 70 was coming out with section 23, with the right to refuse unsafe work. You are coming out with the same arguments. We have seen today that workers have not abused this right to refuse unsafe work. Now you are coming out with the same arguments that the employers came out with in 1978 when you were coming out with Bill 70, with this right to refuse and the right to shut down unsafe workplaces. You are coming out with the same arguments. It has not been abused. I say that the workers should have a right to shut down an unsafe work area for all workers, for their safety.

Moses, I believe you wanted to add something on this.

Mr Riddell: But you have not given me a reason for that.

Mr Sheppard: I am just wondering, Mr Chairman, do we have to share our 30 minutes with Mr Riddell or will we have 30 minutes just to speak to the committee?

The Chair: I think we should just get on with the questioning. Do you wish to add to the response?

Mr Riddell: I am just asking you. I am not disputing the fact that the right to refuse has not been abused. We have heard enough evidence that it has not been. All I am saying is if the right to refuse is made workable in the bill, why do we need to go the extra step then to have stop-work?

Mr Kempton: Why are you afraid of the stop-work clause?

Mr Riddell: I am not afraid of it. As a matter of fact, I lent support to Bill 208. All I am saying is if indeed what these business people are telling us, particularly foreign investors who at one time thought about coming in and setting up business—and dear knows, we need it. By Jeez, the free trade agreement and everything else is driving business out of here and I do not want to see any more go. I want to see some come—if they are saying that one of the obstacles is a stop-work provision in a bill, then I am asking if we tighten up on the right to refuse, do we need the stop-work provision?

Mr Sheppard: Maybe we can give Mr Riddell some graphic representations as to why we have to have that. You will notice on that display some pictures of toilets and washrooms taken from two different mines in the northwestern part of Ontario. One of them has been in operation for 40 years. We did not tell them they ought to construct that kind of toilet; they got there all by themselves.

That is why we need the ability to say to the boss: "Stick it in your eyeball. We are not going to put up with that any more." We have a family album of similar pictures if you would like to look at them about why we need the right to say to the boss: "That's it. No more." If you would like to look at them, I will pass around some lovely examples.

1520

Those three that you see here are your facilities in the Legislature, right here. Miners last year in Ontario produced over \$2 million worth of wealth and you people in the Legislature did not produce anything. Our miners ought to have a toilet at least as clean and equal in structure to yours.

[Applause]

Mr Sheppard: There is a whole catalogue of them here, Mr Chairman, if the committee—

The Chair: I think if you pass that around, Moe—

Mr Sheppard: You can look at them at your leisure. We will duplicate them and send you copies, if you like.

Mr Mackenzie: I would like to say that I am tickled. I did not know you were going to cover the shipbuilding situation, but I am really pleased you have because I think you have given the hard argument to back up the suspicion that some of us had that we were being conned a little bit by some

of the people who have not wanted shipyards and vessels covered under this current legislation.

Interjection: Shipowners.

Mr Mackenzie: Shipowners. This is excellent material, and I really thank you for bringing it before the committee.

Mr Kempton: I would like to add that Canadian Shipbuilding and Engineering, which is the mother company that owns Portship and also owns Port Weller Dry Docks, Pictou Dry Docks and Canal Contractors, supports this clause also.

Mr Mackenzie: The other thing is, you indicate in the brief your frustration in coming before committees like this, which I think some of us, probably to some extent all of us whether we all agree or not, can understand. Certainly the experience before some of the committees that I have seen in my time in the Legislature has not been that useful to workers, but in a bill like this, which is probably one of the most important bills that workers in Ontario will see before them in a long, long time, I would suggest that your frustration not be vented until you have taken a very close look at the actual votes clause-by-clause and who voted how on the legislation and pass it on to your members.

Mr Kempton: Thank you.

Mr Callahan: Before Mr Mackenzie raised that, I was going to raise that too because we had shipbuilders before us who told us that the authority or the jurisdiction was federal and that we dare not put this into our bill. In fact I think we instructed ministry staff to look into the question of whether or not we did have the jurisdiction to deal with it and we got into very esoteric things like if the boat is on the grounds of the shipyard versus if it is in the water, half in the water, half out.

That is carrying it a little further, but I asked them what planes are under, who governs those when they are flying, and they could not give us an answer. So it is interesting that this legislation was tested, I gather, and the laws—

Mr Smith: It was tested and lost, believe me.

Mr Callahan: So you are in essence supporting at least that part of Bill 208?

Mr Smith: Most definitely. We have been since 1983 faced with the frustration of telling our workers when they come to us with certain problems or possibly saying, "Listen. We've got a situation in drydock and we're not getting anything done by our respective employers or foremen. What do you think of us using the right

to refuse?" Then what are we supposed to tell them as their health and safety reps?

Mr Callahan: I think that is precisely the reason why that is necessary, because it lets you at least tell your workers where they stand.

Mr Smith: We have not known where to stand—

Mr Callahan: I appreciate that.

Mr Smith: Well, appreciate the fact that—

Mr Callahan: You had to decide whether they were in point A or point B in order to tell them what their rights were. We understand that.

Mr Kempton: We as employees at Port Arthur Shipbuilding have the opportunity to work on ships while they are tied up on the waterfront and still floating, while they are in the drydock and with all the water pumped out and supported by blocks on the drydock under construction, while they have been in the process of constructing modules to put them together and while the vessel has also been sailing.

Mr Callahan: Yes. I guess without this amendment what you have is, if you are in the machine shop making the propeller for the boat, you are protected under that provincial legislation. If you then move from there to install it on the boat under the present legislation without the amendment, you are not protected.

Mr Smith: You are not protected by anything.

Mr Kempton: We use the scenario that if you are working on a ship in the waterfront, if you were to fall off the staging and if you were to land in the water, you may be covered by federal legislation. However, if you were to land on the dockside, you might possibly be covered under provincial jurisdiction.

Mr Callahan: So you have to plan very carefully where you are going to fall.

The final thing I would like to know is—I find those conditions of those washrooms absolutely abominable; I think any sensitive human being would—but how does that fit into the right to refuse work?

Mr Riddell: Or to stop work.

Mr Sheppard: The pictures that we distributed to you are from mining. The point we wanted to make is, first of all, the mining fraternity is flogging internal responsibility. There is an example, I guess, of what we can expect. Clearly that is what we have after 40 years. But beyond that, we wanted to make the point as well that if you do not much care about things like water and lunchrooms and toilets, then you probably do not give a damn about anything else either.

Mr Callahan: All right. Although we had the one gentleman from one of the mines who told us he had in fact given, without legislation, two of his inspectors the right to stop work and that had come out of his developing a trust for those inspectors that they would in fact only do that in a situation that was responsible. So I think, in fairness, there is at least that one mine, and I cannot recall where it was—

Mr Smith: You are always going to have exceptions to the rule.

Mr Sheppard: I think benevolence is a marvellous kind of attribute. We would prefer to have something in legislation.

Mr Wildman: Just following up from what Mr Callahan was referring to, the individual did make that assertion before the committee, but we also know from other presentations before the committee that the right to stop work was negotiated by those locals with their employers. It was not given by the employers just out of the goodness of their hearts.

Since you have raised the question of these appalling conditions in mines and indicate them as an example of management's attitude in these instances towards health, if you want to use that term, and how it might indicate an attitude towards safety, I was just reading the local newspaper this morning, the Times-News, and I wish I had seen this before the Mines Accident Prevention Association of Ontario appeared before the committee this morning.

I know the Steelworkers do not represent the workers at Geco in Manitouwadge, but there is a story in here which indicates that on 1 February three contractors were left underground while they blasted. Luckily nobody was hurt, but it was just luck. Their health and safety person was not notified by management until the next day, even though their collective agreement states that the health and safety rep for the union is supposed to be involved in the investigation.

Since you have some passing knowledge of mining in the province, Moe, you might comment on whether you think this kind of a situation is unusual.

Mr Kempton: I would like to make a comment. Having been up in Manitouwadge where Geco Mine is the past two weeks, there was also an instance at Noranda's other mine at the other end of the block down there, the Golden Giant Mine—

Mr Wildman: At Hemlo?

Mr Kempton: At Hemlo—where a supervisor had instructed one of the workers to take down a

warning barrier and signs posted and to proceed to dump ore down a chute when there were people working down below. That not only happened once—that was, I guess, two weeks ago on a Monday—they did it again last Monday, two weeks in row, and it was the same supervisor who had instructed people to take down these warning barriers, because there were people working below, and to drop their material, as they are mucking out, down these holes.

Luckily, the second time it happened, the people who were going to be mucking had not started the operation yet, and they heard machinery running down below and went down to investigate why there was someone below.

1530

Mr Wildman: Obviously, in those cases, if they can be substantiated, the reason there was nobody hurt was just pure luck.

Mr Kempton: Pure luck. In the first incident, the guy was missed by about 20 feet. He just happened to be underneath the hole and got past the chute, and the material fell behind him. The second time, the guys up above, before they started the operation, had heard the machinery running down below.

Mr Wildman: If this is not unusual, do you think it could happen or would it be allowed to happen if we had worker inspectors who had the right to shut down?

Mr Kempton: No.

Mr Sheppard: That kind of event is not a common, everyday occurrence. It does happen with a good degree of regularity. In the area that I cover, from Marathon to Red Lake, in the last year we have had about half a dozen of those kinds of incidents, and it is more good luck than good luck than good management that people have not been killed.

Again, I think the caution has to come forward. Management has sent and does send some very strong messages frequently to people about what happens to you if you interrupt the operation. We have had people at one of our places in Marathon who went out on an inspection with the supervisor. The supervisor told him to take a list of all of the things that they found wrong, and at the end of it he was told to go and fix those things that he had found wrong.

Clearly, the act speaks to that. We filed a grievance and finally management agreed that it was terrible that it had happened, but it would not happen again. It has happened two or three times since. The difference is with different supervisors. And they make that point, "Well, you

know, the first guy didn't do it again." So presumably, we will go to all of the supervisors. God forbid that someone should die or leave town and we get a new batch.

The Chair: We thank you for your presentation. I think we do understand as well your scepticism about the process. I would just tell you that on Wednesday afternoon the minister will be coming before this committee in Toronto to indicate what, if any, amendments he wishes to have put before the committee. At that point the committee begins the clause-by-clause debate all the way through the bill, and then it is reported back to the Legislature on 26 March. So we will await the outcome of that. Thank you very much for your presentation.

Mr Sheppard: Some of us will see you in Dryden tomorrow.

CANADIAN PAPERWORKERS UNION

The Chair: The next presentation is from the Canadian Paperworkers Union. There has been a change in the agenda here. The Canadian Paperworkers Union has switched with the Thunder Bay and District Injured Workers Support Group.

Gentlemen, we welcome you to the committee. If you would introduce yourselves to us, we can proceed.

Mr McInnes: My name is John McInnes. I am vice-president of the Canadian Paperworkers Union, Region 3. To my right is Jim Petosky, safety representative from Local 39 of Canadian Pacific, and to my left is Glen Vibrant, safety representative from Local 38, Northern Wood Preservers.

We are making this brief today on behalf of locals 38, 39, 40, 41, 132, 134, 239, 249, 255, 257 and 528, which represent about 4,100 working men and women in the Thunder Bay area. From time to time, as I go through the brief, I will be straying from the hard text and will be talking about certain issues.

We know that this is your second-to-last day of hearings on Bill 208. You have already heard from many other locals of the Canadian Paperworkers Union in other parts of the province, as well as from many other unions. We hope very much that the efforts have not been in vain; that these hearings were more than just show by the government to pretend that it is interested and concerned about what workers really feel about occupational health and safety legislation.

By now, you have heard a lot. Perhaps you think you have heard it all. But please bear with us if we repeat some points already made. This

issue is more important to us than to you because we will personally live with the consequences of inadequate legislation when you are safely back in Queen's Park.

The health and safety nightmare: The cold, harsh statistics on the state of occupational health and safety in Ontario have been repeated so many times that you probably know them by heart. Let us help you understand the real tragedy behind those statistics by telling you about three recent deaths of our fellow workers.

Karel Smodis, Local 134, Abitibi-Price, Thunder Bay: Karel was working alongside a supervisor on an elevated conveyor that was not locked out as it should have been. He was not wearing a safety belt and was killed when he was thrown to the ground. The supervisor survived.

Working without a belt and not locking out the conveyor switch were accepted practices. Karel would be alive today if only one of these very basic safe working practices had been followed.

Let me talk about the fatality of Karel Smodis for a minute. During our investigation into that fatal tragedy, we found that not only was it common practice that it was not locked out, but we were told it took too much time to call an electrician to go to the substation to throw the switch to knock the power from those conveyors.

We were told that it was common that the workers were on the conveyor. In fact, even during the inquest we were told that not only the workers were on the conveyors but senior supervisors were on conveyors to knock ice off during winter months and have a fellow worker jog the conveyor while they were on it. This is a serious issue and gives guidance to the workers that both of us say should not be given. But it happened.

It is simply not acceptable that when you have the legislation or when you have local safety rules, they are not only violated but they are violated and guided through supervision.

Réal Boudreau, Local 528, Domtar, Red Rock: Réal died a horrible death when the safety controls of a pressurized digester full of acid steam and wood chips opened prematurely and covered him in acid.

Several weeks earlier, operators of the system had expressed a concern about a routine practice that would allow this to happen. The concerns had been noted in the foreman's log book, but had not been addressed.

Réal Boudreau, an operator on that digester, only six weeks prior to the accident saw the same sequence of events taking place on his monitor, his new computer, the new computerized digest-

er, and was able to put enough men on enough controls to make sure that the digester did not open and to make sure that working men and women were out of harm's way.

He took the time to not only log it in the foreman's log in writing but to stay after work to talk to supervision and say: "Look, here's a sequence of events. Here's the potential of what could happen if we had not spotted it." Nothing. Nothing was done.

Six weeks later, there was a tragic accident. A 27-year-old worker who had not yet begun his life lost his life because of that tardiness, because of the lack of enthusiasm, because of the unconcern about safety in the workplace taken by that particular division.

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Paul Jackpine, Local 38, Northern Wood Preservers: Paul was an operator on one of two stackers, which were identical except for one feature. The stacker Paul worked on had the ability to automatically eject a stack of lumber; the other one did not. The operators did not know of this automatic feature. No one had told them.

Many times during the shift the operators would work between the stack of lumber and an I-beam without locking out the equipment as they were not aware that one stacker could eject its load automatically. Paul was working between the stack and the I-beam when it ejected. He was crushed to death. Paul Jackpine was a worker who loved his work and was building and looking forward to retirement.

The one thing I do not tell you in this brief is that the other stacker also had an automatic ejection system. It was there, but the company disabled it. Do you know why? Because on one shift when the automatic ejection system kicked out the load of lumber, it kicked it out so far that it came off the end of the table and it damaged the product. When it damaged the product, it reduced the profits. They immediately disengaged the automatic ejection. This industry is known as a knee-jerk-reaction industry, and most are. An action happened; the lumber was kicked off the table and damaged; a reaction took place. They eliminated the problem. They disengaged the automatic ejection. On the other stacker, an action had not occurred yet, so there was no need to make that move. Unfortunately, a tragedy happened. The action that happened took the life of a worker. The reaction the company took was to disable the automatic ejection system. Why does it take an action to get a reaction? Why does it take action such as loss of life or limb before they spend money to correct unsafe conditions?

Perhaps you can now understand that we are not talking in abstract about the need for stronger laws that give workers more training, more right to know about potential hazards, more right to inspect the workplace and everything in it, and more control over conditions that may be dangerous.

We are sickened by these endless deaths and we are outraged at this timid government, which has the interest of the employer more at heart when fashioning legislation that is supposed to be for the protection of the people, not profit.

The government has deliberately missed the opportunity to wake us up from this nightmare where more than 7 million days per year are lost to workplace injuries and hundreds of workers are killed. Instead, it has chosen to plod along with the obvious failure of the internal responsibility system, dressing it up a bit in a feeble attempt to make it look new and exciting. What a waste. What a shame.

The inadequacies of Bill 208, the internal responsibility system: The principal inadequacy of Bill 208 is that it continues to be based on an internal responsibility system. In our experience, this is a licence for ignorance. For example, in Local 38 we have found that management, including those who served on joint occupational health and safety committees, are simply not aware of the responsibilities or correct procedures under the act. When our worker representatives are not notified at the time of critical injuries and fatalities, we hear the excuse, "We did not know it was required." That is industry in today's world. "We did not know it was required."

This also happened in Local 39 when a worker representative casually heard about the electrocution of a fellow worker, an accident that had hospitalized a worker for two weeks. There was no investigation at the time of the accident. Again, "We did not know it was our responsibility."

These are large companies, not small shops. Yet their ignorance is appalling and inexcusable. The system is not working and all management can do is complain about its workers' compensation premiums. Bill 208 will not change this.

The right to stop work: It is clear to us that Bill 208 expresses the government's trust of employers and distrust of employees. The right of a worker-certified member to stop work can be overridden by a management-certified member on the spot without even an adequate investigation taking place. Furthermore, the worker-certified member can be penalized if he or she does not exercise the right to stop work

responsibly, but the management-certified member who may restart work irresponsibly is not mentioned at all in the legislation.

It has been said that if we give the right to stop work and pass this legislation, there will be massive abuses. Well, there have been no massive abuses under the present legislation. In our industry, there have been no massive abuses and there will be no massive abuses should the right to stop work be passed in this legislation. But there has been under management; there has been abuse. There has been intimidation. Let me take you to a couple of examples, and I want to talk about them later on. There has been abuse.

Another huge flaw in this so-called right is that workers who are affected by a stop-work order or work refusal are not guaranteed their wages, even if the work was stopped for completely valid reasons and the employer had violated the law or a regulation.

Let us give you an example of why this protection is important. In Local 41 recently, a worker refused to operate a piece of mobile equipment when he could not see where the load he was pushing was going. He was concerned because co-workers were working in the area. When he refused the work, the manager threatened to shut down the plant and send all employees home without pay. The refusing worker courageously refused to bend to this intimidation and the manager made good his threat. When the ministry inspector finally arrived, the work refusal was upheld and an order was issued. But the workers who were sent home recovered their wages only through the grievance procedure. Intimidation.

Let me give you another example that happened recently just outside of Toronto at a plant known as Easy-Plan Furniture Ltd, which makes furniture. There were 11 employees on the shift. They were spraying on a cleaner for electrical motors and they started to complain about burning eyes and itchy throats. Patches started to show on their skin. They told their lead hand that they were going to go outside, because obviously there was something wrong. The lead hand spoke to senior supervision, who said: "Those who go outside, keep walking. You're terminated." There were 11 on the shift. The intimidation worked. They stayed until worker had to drive worker to the hospital. In the end, all 11 were there. In the end, one worker lost his heartbeat and another worker was put on a heart machine. Today some of those workers are still off the job with intestinal burning. We still do not know the total damage that was done. Intimidation. Has

there been abuse of the present legislation? Certainly, but in our industry it has been on the part of management and not on the part of the workers.

Under the present law and under Bill 208, those workers have no clear right to their wages in such a situation. This is unacceptable. In nonunion shops, it will take an exceptional individual to stand up to the pressure of such threats.

The right to refuse unsafe activity: What is an unsafe work activity? Can any of the members of this committee give us a definition? Is it work that is likely to cause immediate injury, such as lifting a load that is excessively heavy and awkward? Or is it work that is likely to take one or two years to cause irreversible physical disability?

We think that both kinds of work are unsafe work activities. But the Minister of Labour does not agree. Why not? Surely the Workers' Compensation Board can tell him that repetitive strain injuries are epidemic in Ontario. How many crippled workers does it take to wake him up to this very serious occupational health and safety problem?

We need the clear right to refuse work activities which are known to cause repetitive strain injuries. If the minister will not relent, he is personally consigning thousands of workers a year to painful, crippling disabilities which are a drain on our compensation and health care systems.

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Employer reprisals: Whether you want to admit it or not, it is a matter of public record that some employers will penalize workers who exercise their rights under the act. The actions before the Ontario Labour Relations Board on employer reprisals is proof enough. Who can guess the real extent of this attack on our rights?

Yet who can blame employers for trying to get away with this? After all, there is no risk involved. If a worker is fired or otherwise penalized and his claim is upheld by the OLRB, the most that happens is that the employer must pay the worker what he or she would have and should have been paid in the first place. There is no other penalty. It is a no-lose situation.

Clearly this is grossly inequitable. We need sanctions against employers who violate section 24 of the act. They should be prosecuted and, if guilty, fined for this violation, in addition to giving the worker appropriate compensation.

Workplace inspections: Do workplace inspections serve a purpose? Of course they do.

Inspections not only identify hazards and lead to the prevention of workplace injuries; they also create awareness of health and safety concerns on the part of employees and management alike.

There is no better or cheaper way to correct and prevent hazards than through workplace inspections by qualified workers who understand the jobs and the work environment.

If inspections did not work to reduce hazards, there would be no point to prescribing them in the law. But since they do serve an important function, there is no point to limiting them to once every 12 months. It is amazing to us that the government does not seem to understand this. It is not willing to hire sufficient numbers of inspectors, and it handcuffs the army of onsite, volunteer inspectors who could do so much for so little. Tens of millions of dollars are spent every year on formal health and safety training. Why neglect this extremely valuable source of informal and highly effective training?

Because of employee turnover, there are many new employees in potentially hazardous jobs who may not be visited by an inspector for many months. A single inspection at the work station of a new worker can be an important educational experience. The inspector can acquaint the new worker with known hazards that may not have been mentioned by the supervisor. We know that few employers give their new employees any safety training. More frequent workplace inspections are vitally necessary.

Let me say that in our industry and most of our plants, the companies have hired what they call safety supervisors. They wave the flag to the public: "We're concerned about safety. 'Safety' is the new word of the 1980s and 1990s. We want to make our plant safe. We've hired this safety supervisor who is going to go out and correct the potential hazards in the workplace." What a bunch of nonsense.

I ask anyone on this committee or the minister to go talk to any employee in those workplaces where they have the safety inspector and ask him a couple of very key questions—I will not be there; ask him on your own—"When was the last time you saw that safety supervisor in the workplace?" I will tell you the answer: never, or almost never, or only after a fatality or a serious accident. Again, an action, a reaction—we see a safety supervisor.

These so-called supervisors who were going to make our workplaces safe and change our habits that we have developed as workers over the past 30 or 40 years, and take the injuries on the job and reduce them, have become nothing other

than paper pushers who try to beat workers out of IWA-Canada payments and Workers' Compensation Board payments. They do nothing to prevent unsafe conditions in the workplace.

We suggest that health and safety committees be given the authority to order more frequent inspections. If a committee is deadlocked, the ministry inspector should be empowered to make a decision.

The role and authority of committees: Committees are the backbone of the internal responsibility system, yet so many of them are spineless puppets of employers. First, we object that management members of the committee are not required to come from the workplace itself. We know the reason worker members must come from the workplace is to keep full-time union representatives off the committees. So why does management have the right to install full-time professionals on the committee? The role of these professionals, who may have little or no familiarity with the workplace, is often to intimidate the committee, including keeping other management members who may in fact come from the workplace in line.

Committees should have the power to order changes to the workplace, not just make recommendations. Responsibility and authority must go together. Internal responsibility implies internal authority. If the committee is to be the chief responsible vehicle for making the workplace safer, it follows that it needs the effective authority to do so.

Bill 208 does nothing significant to improve the powers of the committees. We appreciate being given at least an hour to prepare for meetings, but what happens if the employer does not allow this? What happens if an hour is not long enough? What if more than an hour is needed in some circumstances? Very often in our workplaces we deal with local unions that are 1,500 and 2,000 working men and women strong, and a number of unsafe conditions have to be dealt with at the same time. An hour certainly in those situations, and many others, would not be adequate to prepare.

We also worry that worker committee members in nonunion workplaces are often selected by the employer. To counter this, we suggest that the ministry inspectors meet at least once per year with workers in nonunion shops to explain the role of committee members and to oversee the election of worker members.

Testing of chemicals: The paper industry uses a lot of chemicals, many of which are extremely toxic. We wonder if the fumes we are breathing

will shorten our lives. We have the right to know. We do not like the idea that chemicals can be used in our workplaces just because they have already been used somewhere else in the world. There are too many countries with no standards or low standards for workplace chemical testing. We suggest that only chemicals which have been tested in countries which have standards at least as high—hopefully higher—as Canada be allowed into our workplaces.

Certified members: The idea of specially trained members of the joint occupational health and safety committee is a good one, but it seems government is afraid of the idea. Bill 208's careful protection for employers against the possibility that a worker certified member may act irresponsibly betrays the government's attempts to take very small, timid steps in a direction in which we clearly must go, putting more authority for health and safety in the hands of those who suffer the consequences of poor legislation and working conditions.

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The certified member must be required to investigate all workers' complaints. Otherwise some employers will inevitably pressure them to ignore small complaints or to delay investigations because, "We're too busy now." When we compare those possible abuses of a worker's right to have his or her health and safety concern investigated immediately to the seven million lost working days per year, how can we deny that we must do more, a great deal more to resolve these concerns?

We also think that the grounds on which the certified member can stop work should not be limited to violations of the regulations or obviously dangerous situations. Think of the tragic case of Paul Jackpine. Could anything in Bill 208 have saved him? No. If a certified member had walked by when Paul was working between the stack of lumber and the I-beam, could he have stopped the work because the situation looked unsafe? Not under Bill 208. While the lack of a lockout switch on the stacker was probably a violation of some regulation, it was not obvious. In this situation the certified member would not have had the authority to stop work.

Furthermore it is irresponsible to expect anyone, even a well-trained person, to retain everything they have ever learned about this complex subject in their heads. Decisions will have to be made on the spot about whether work should be stopped. If a certified member must fear possible disciplinary action if he or she stops

dangerous work that is not technically violating a regulation, his or her authority, and consequently effectiveness, is greatly diminished.

We strongly urge you to remove this restriction from Bill 208 so that the certified member can stop work that he has reasonable grounds to believe is likely to injure a worker or workers.

Conclusion: The white paper on occupational health and safety reform laid out several principles on which any legislation should be based. We do not see how Bill 208 adheres to these principles. For example, principle 4 reads: "Improved health and safety requires control of workplace risks by workers and employers. In turn, effective control requires that both workers and managers have appropriate rights and authorities." Both have "appropriate rights and authorities."

We believe that we have shown in our analysis that Bill 208 gives very little control over workplace risks to workers. Of course, employers always have control of risks. No legislation is needed for this. In turn, workers really only have the right to self-defence with the right to refuse unsafe work, as well as the right to call on an overworked ministry inspector. Workers have no real authority under Bill 208. The worker certified member's authority can be overruled immediately by the employer. This principle, while nicely expressed, is not realized in Bill 208.

The other principles in the white paper are equally hollow. The government has substituted rhetoric for reform, a fairly common habit of governments everywhere. We want you to know that you are not fooling us. You may get away with it because of your majority, but we intend to remind you in the coming months and years, with every workplace death, with every increase in the accident and disability rate, with every ridiculously low fine to employers who violate the law, that you are responsible. You had the opportunity to do something good, something important, something human and civilized, but you bowed to the priests of profit and productivity and sacrificed more and more workers in the process.

If our statements seem strong, it is because we are thinking of Karel, Real, Paul and thousands of others who have died needlessly on the job. We are tired of funerals. We expect more courage from this government. You were not elected by the employers. You seem to have forgotten us.

The Vice-Chair: I want to thank you for a strong brief, obviously with feeling. We have gone a little bit over the 30 minutes, so I am

afraid we are going to have to continue on with the next presentation.

Mr Callahan: Could I just get a point of information?

The Vice-Chair: There is one on ahead of you Bob, and if I did, I would be in trouble. Thank you very much.

THUNDER BAY HYDRO ELECTRIC COMMISSION

The Vice-Chair: The Thunder Bay Hydro Electric Commission, Larry Hebert, general manager. Mr Hebert, you know the rules we are operating under. You have 30 minutes to make a presentation. You can use all or part of it and allow for questions. I will ask you to proceed.

Mr Hebert: I would like to start. I have three components to my presentation. First, I thought I should clarify the number of hats I will be wearing in making this presentation because I am sure you have heard much of the submission that I am going to make from the Municipal Electric Association standpoint at several other meetings you have attended across the province. I only want to highlight the major issues and then open it up for questions at that point.

First, I am the general manager of a member utility of the Municipal Electric Association and one of the 317 or 316 referred to in the report.

Second, I am a member of the board of directors of the Electrical Utilities Safety Association and I have attached a separate submission which outlines in more detail the makeup of our board and our inclusion of the unions in our committee work. Our safety association is the oldest of the nine major safety associations in Ontario. In fact we are one year younger than the Workers' Compensation Board itself and are celebrating our 75th anniversary this year. To my knowledge, we are the only safety association that consistently delivers occupational health and safety programs directly to the workers in our industries, and has done so since the beginning of our safety association back in 1915.

Third, I am chairman of the 1990 Forum North. Forum North is the oldest, in six years, of the regional safety conferences started by the Industrial Accident Prevention Association. Others are now held in Ottawa, Windsor, Sault Ste Marie and Sudbury. Once again, we led the way in Thunder Bay in 1989 by turning Forum North into an all-safety-association forum. I am representing EUSA and will chair the 1990 conference in November.

All provincial safety associations support this joint effort and in fact will try to emulate this

co-operative approach in other regional centres, as well as for a major provincial conference in a couple of years that will be of a generic nature that all safety associations can attend and support together. In Thunder Bay we have invited the workers' centre to participate but they have chosen not to up until now. We do keep them informed, however, by sending them minutes.

Finally, I am a member of District 3 of the northwestern Ontario region of the Municipal Electric Association executive and am representing district utilities from Kenora to Terrace Bay as well. I am sure you may hear from them in Dryden as well tomorrow.

The second document I wish to refer to is the outline of the board of directors and some of our committee structure at the Electrical Utilities Safety Association. The affairs of the association are carried out by the board of directors. The board is made up of 16 members elected from, and by, the membership representing the following groups in WCB class 22: There are nine representatives from municipally owned electric public utilities, of which I am one; privately owned electric public utilities, one; municipally owned telephone utilities, one; privately owned telephone utilities, one; private contracting firms, both electrical and telecommunications, two; cable television firms, two, for a total of 16 on our board.

The board of directors are president, D. W. Dowds, professional engineer, general manager of Barrie Public Utilities Commission; first vice-president, D. D. McCarty, director, customer services and business information systems, Northern Telephone Ltd; second vice-president, myself, Larry Hebert, MBA, general manager, Thunder Bay Hydro; immediate past president, J. I. Mason, MBA, utility division manager, B and M Utility Contractors; the general manager, and secretary-treasurer of our association is C. J. Tallon.

The directors are A. C. Alblas from Skyline Cablevision in Ottawa; E. G. Chapman, manager of Brooke Municipal Telephone System; L. A. Duggan, vice-president of operations from Great Lakes Power; C. F. Gaten, director of corporate development for PowerTel Utilities Contractors Ltd, just outside Sudbury; H. W. Hardwick, operations manager, Maclean Hunter Cable TV in Etobicoke; C. E. Ireland, general manager and secretary, Sault Ste Marie Public Utilities Commission; K. D. Matthews, general manager, Brampton Hydro Electric Commission; G. A. McFarlane, general manager, Sarnia Hydro Electric Commission; Don McKee, general

manager, North York Hydro Electric Commission; R. A. Noonan, general manager and secretary, Oakville Hydro Electric Commission; Jim Roughley, manager and secretary, Brockville Public Utilities Commission; and Bill Scott, general manager and secretary, York Hydro Electric Commission.

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Our association also services schedule 2 employers such as Ottawa Hydro; Windsor Utilities; London Public Utilities Commission; Ministry of Transportation, electric section; city of Thunder Bay, street light department; Thunder Bay Telephone Co, which is a new member as of 1 January 1990; and members by application from the water distribution/treatment sector. The latter group is not represented on our board in accordance with the current constitution and bylaws, but we are looking at that right now and revising it.

In addition to the previous information, Bill Moore, international representative of the International Brotherhood of Electrical Workers, sits on two of our board committees, and I must say they are two of probably the most important board committees that we have, rules review and awards. Currently I am chairman of the rules review and we are having our first meeting and revising our rule book Friday of this week.

It should be noted that CUPE and the Communications and Electrical Workers of Canada have also been invited to sit on these committees, but have chosen to decline. It may be of interest that in the mid-1970s under direction from the Ministry of Labour, the Provincial Labour/Management Safety Association was formed as an advisory group in matters pertaining to occupational health and safety of the electrical utilities and related industries. This committee, which is made up of representatives from organized labour, both IBEW and CUPE, and management from Ontario Hydro, Electrical Contractors Association of Ontario, Municipal Electric Association and Electrical Utilities Safety Association of Ontario, meets bimonthly to review regulations, rules, safe operating practices affecting the industry, and to monitor the needs of the group represented. The Electrical Utilities Safety Association is also charged with providing the secretarial and the responsibility of chairing this group. Our general manager, Chuck Tallon, today as in the past, carries out those duties.

I gave you those two documents as way of background for what I am going to say in comment under the general presentation from the

MEA. I am just going to highlight that and then open it up for questions, if that is all right, Mr Chairman, rather than wading through the presentations I mentioned. You have probably heard this at least three times in your jaunt around the province.

Briefly, from an executive summary standpoint, the MEA believes that Bill 208 could adversely affect workplace efforts for the health and safety of employees and the public. MEA is equally concerned that some of the provisions of the bill may be detrimental to the effective programs of the Electric Utilities Safety Association, which serves the 316 MEA member commissions with exceptionally effective programs. That is why I gave you the background earlier of the EUSA board.

MEA supports the stated goals of the legislation, but is concerned that the proposed amendments are structured in such a way that it creates a serious risk of impeding rather than advancing the cause of health and safety. Make no mistake about it, we are very concerned about health and safety in the workplace and I think the record in our industry proves that.

I turn to page 2 of my submission, the comment at the bottom. It is the view of this association that the extremely worthwhile goal of promoting and encouraging health and safety in the working environment can best be achieved by creating a legislative framework which serves to encourage mutual co-operation and respect between employers and employees on this important issue so that health and safety concerns and problems can be approached by management and workers on a unified basis rather than by way of confrontation.

Surely the key thrust of government in obtaining these desired ends should be to focus around ways of bringing the workplace parties together as partners, not by creating new and divisive ways of driving them into new areas of confrontation and polarization, which unhappily may be the result if some of the provisions of Bill 208 are actually carried forth into law. In a very short statement, if it ain't broken, don't fix it, and if it is broken, make sure the cure isn't worse than the disease.

Turning back again to the executive summary, we have highlighted these areas:

The agency and its relation to EUSA; we feel the Electric Utilities Safety Association board works very fine. We feel it is the finest of the provincial safety associations, and I say that, and I am proud to sit on that board.

Refusal to work; this area gives us concern. We feel the current legislation is satisfactory in this area, and we have some concern that public utilities may be limited in their job to deliver power to the people because in many cases we go into hazardous situations, with lines down, and our people are adequately trained to handle those hazardous situations.

Representatives; once again, the change to encompass units with five employees may create unnecessary and unproductive burdens on small employers. There are many, many small utilities. Of that group of 316, the majority, in the area of 180 or so, are very small employers, employing 10 or less employees and it could create many situations for them as well as the contractor section of our industry.

Work stoppages by certified workers; the potential for abuse or misuse; the impact on essential service and the lack of clear rules in our industry and in the current draft of the bill can lead, or potentially lead, to serious problems. Public utilities should not necessarily be subject to this provision, particularly if a situation presents imminent danger to the public. That is our job, to go out and solve those problems.

In terms of the joint chairperson, on page 18 in our brief, the proposal seems inconsistent with the desired unity of a safety committee. I can indicate in our utility, our safety committee works very well and is responded to quickly and unflinching by the management and supervisory staff at Thunder Bay Hydro.

Health examinations and tests; the various changes proposed in Bill 208 work against each other and against the best interests of employees collectively.

Access to health records; these provisions seem to be too broad for the purpose of this legislation, given other government policy and the provisions already in place to protect the confidentiality of health information.

Time limits; the proposed time limits are too short and could cause less than adequate review of committee recommendations.

Number 9 on page 22; the process seems inappropriate in terms of notice of compliance and is designed to promote confrontation in the workplace.

Number 10, under redundancies, page 23; there are either redundant clauses or insufficient clarity in parts of the bill as it is currently drafted.

Number 11, on page 23, fines: the imposition of much larger fines is inordinate and potentially destructive of business operations, particularly smaller businesses. It is counterproductive to the

goals of the legislation itself. Governments should undertake to redirect these funds collected by fines into safety programs.

While some of the objectives of the bill are worth while, it is clear that more extensive thought and review is required to ensure that the potentially negative effects of these amendments are kept to an absolute minimum.

Mr Chairman, rather than run through the whole presentation of the Municipal Electric Association, unless somebody wants me to, I will open it up for questions and comments to me at this time.

The Vice-Chair: Thank you very much.

Mr Wildman: I noticed you used a phrase that it is your responsibility to deliver power to the people. I submit to you, in a very different way, this bill as it was originally drafted was intended to deliver power to the people and that is really what we are talking about, power in the workplace.

I have two questions. First, surely you do not maintain the position that if one or a couple of your employees were required to go out to a site where lines were down but, prior to leaving, noticed the brakes were not working on the vehicle they were supposed to use, they should not have the right to refuse the use of that vehicle?

Mr Hebert: If that happens in current practice, they get a hold of the mechanical problem—they are also on call—and they get another vehicle.

Mr Wildman: So surely they should have the right to say, in a responsible manner: "This is not safe. We have the right, therefore, to say we won't use this vehicle." You are saying that is done. If that is the case and you trust your employees, then why not give them the right to refuse that they can use responsibly, instead of suggesting they will abuse it?

Mr Hebert: In that case, I do not think it is abuse. There could be potential for abuse there. That is all I am saying. In that case, I do not think it is. I have not experienced that. We have not had that situation in our own utility at all, as far as I am concerned. If a situation such as you describe happens, they get another truck.

Mr Wildman: Okay, do you have evidence that the right to refuse that has been extended to workers since 1979 has been abused?

Mr Hebert: In my own utility situation, I have not. In the overall MEA—I will turn to that section—I think there have been examples cited

with regard to the Labour Relations Act and abuses.

Mr Wildman: I will just refer you to the presentation that was made by Ontario Hydro management to this committee. They say: "When Bill 70, an Act respecting the Occupational Health and Safety of Workers, was first introduced in the 1970s, one of the major concerns that many employers had was the right to refuse unsafe work. All kinds of assumptions were made by the doomsayers that all work would stop and the province's production would suffer. That simply hasn't happened. We have had some work refusals at Ontario Hydro for activities that were unsafe and in most of those situations, the employees were right. Major work stoppages, however, never materialized."

1620

Mr Hebert: Basically, I think that is true, by and large, in our industry and I submit that is a good reason to keep what Bill 70 provided.

Mr Wildman: Okay. But, you see, it is interesting that Ontario Hydro, which is obviously in the same kind of business that you are in, has come to a very different conclusion from yours and has indeed negotiated a right to stop work, and worker inspectors with its unionized employees. It seems to have no fear that this is somehow going to open Ontario Hydro up to abuse by its workers.

Mr Callahan: I speak only for myself, as far as I know, but one of the things from the last presentation that disturbed me, and that has disturbed me in some of the presentations, was the situation where an employer, through intimidation, prevents this proposed certified worker from calling a halt to work because of a clearly obvious danger and has, as in the case of the gentleman they referred to, the guts to go ahead with it anyway, knowing that if work is stopped, his fellow workers are not going to be paid.

The question I wanted to ask them was how, in this particular instance—and you were here, I gather—they got their pay anyway? I gather it was through grievance procedure where, because of the intimidation on the part of the employer, that the body that gave them their wages found this to be something it could not countenance.

I put it to you, because you are obviously arguing the other side—and you used the words "for potential abuse or misuse," and I think that is at the very heart of this entire confrontation, as it were, between labour and management. How would you feel if, as the *quid pro quo* for ensuring, on the one hand, that an employer

would not use intimidation tactics to prevent a certified worker from issuing a legitimate stop-work in a seriously dangerous situation, versus the peer pressure that is obviously going to be on that certified worker to ensure that he does not proceed in a frivolous manner—because, under those circumstances, there would be compensation for his fellow employees, but under a situation where there was shown to be intimidation by the employer, the employer on the other side of the coin runs the risk of being required to pay those wages if, in fact, the board finds the stop-work was legitimate? Would you not see that as a sort of weighing of one against the other? Neither side gets the total loaf of bread, but it in fact ensures that the certified worker acts responsibly or he suffers the wrath of his fellow employees. But it also prevents him from being intimidated by an unscrupulous employer who may wish to just put him under the gun of that reprisal from his fellow employees. How do you see that?

Mr Hebert: I suppose there is a balance, but taking the union position for a minute—and I did not hear all of the presentations, I assumed that was garnered through a grievance and then arbitration decision—they are relying on another piece of legislation to get their side of it so, from their standpoint, they might not see that as a balance, but I understand what you are saying. There is some balance to it.

Mr Callahan: It may not be a perceived balance. But in fact what happens is, you create a scenario where the unscrupulous employer can in fact intimidate that certified worker and you thereby take any of the efficacy out of that particular provision. If they are going to get it through grievance in any event, because of these actions on the part of the unscrupulous employer, why then not provide that balance in there to allow perhaps labour and management to stop feeling that everybody in management is going to require them to continue to work in unsafe situations and, on the other side of the coin, prevent management from having that attitude or that suspicion that, if they are given that power, they are going to abuse it and misuse it?

Mr Hebert: I guess, in the obvious situations at either end of the spectrum, there is no question that that balance is there. The issue becomes dicey when it is an iffy situation and whether or not, from a union standpoint, they would get their wages paid through a grievance procedure. If it is quite obvious then I think management would be foolish to challenge it under a grievance arbitration procedure, but that is a way of getting

it. As I said, I did not hear the whole presentation so I do not know what process they went through to get paid after they went out on a stoppage anyway.

Mr Callahan: I think, in essence, what they were saying was that in this particular example they gave us the employer quite clearly tried to intimidate the person who was going to call a stop to the work. Had that worker capitulated—and we heard examples of that—he would have to take two things into consideration, one now and the other, if the bill goes through with the right to have him decertified, that in fact his fellow workers would not receive any wages during that stop-work. But if both of them had responsibilities and obligations, would that not create a balance that might prevent the either/or of doing that type of thing?

Mr Hebert: Yes, I think it would. In fact, I would think in a case like that where it is blatantly obvious, or becomes so through whatever procedure, whether it is a court or an arbitration procedure, then there should be a fine forthcoming to the employers if they tried to carry on intimidation tactics. I do not know in this case if there was a fine or not, but employers should be fined if that intimidation is there.

I do not think that is working towards the goal. Once again, I do not have any problem with the goal of the legislation in terms of making a safer workplace. I come from one of the recognized buildings in this city. We house the regional office for Ontario Hydro and ourselves. Unfortunately, Ontario Hydro has had two deaths in the last year, one in this area and one just outside Sudbury not too long ago. When that flag goes down to half mast on our building, I feel like someone in my own organization has died. So I do not think anyone, certainly in our organization, either management or the union, wants to see injury or death in the workplace, and I hope that is true right across, although obviously you are hearing things to the contrary in your hearings.

Mr Mackenzie: I would like to take over where my colleague left off. Your brief, very frankly, Mr Hebert, bothered me a bit. On page 3 of your presentation you say, "While some of the objectives of the bill are worth while, it is clear that much more extensive thought and review is required to ensure that the potentially negative effects of these amendments are kept to an absolute minimum." You backtrack from there.

First, I should say there were extensive negotiations, consultations and discussions for well over a year before the original draft came

out, and that was between ministry, management and labour people. Obviously, it was at the top level and I do not know how well some of the message was passed on, but that resulted in the bill.

If you go back to your concerns, the agency, the refusal to work, the representatives, the work stoppages, the joint chairperson, the health examination and tests, the access to health records, time limits, compliance, fines, redundancies, you are refusing almost every key section of what we are trying to do in the legislation. It really leaves me wondering just how much of what is there you are supporting.

I wonder if you have read the Ontario Hydro brief.

Mr Hebert: No, I have not read the Ontario Hydro brief, but can I just make a comment to your comment?

Mr Mackenzie: Okay, I will just finish. I have one or two more comments and then you can answer it in total.

"This committee has recently agreed to proactive steps which will enhance participative management and health and safety....the most important principle is the agreement of shared responsibility and accountability by the union and management for the actions taken by their respective certified members. This demonstration and commitment of trust by both parties will become the cornerstone of our joint partnership in the stop-work area.

"The entire world is changing. One only needs to look at the changes taking place...to see that people expect to have a greater say in what affects them."

There are some other equally strong comments, as well as a re-evaluation of the position and now, in effect, a support of the bill. I just wonder if you yourself do not think that is a heck of a lot more positive in terms of trying to come up with co-operation than the almost totally negative pitch that you have given us in your presentation.

1630

Mr Hebert: I obviously did not make it clear at the beginning of my presentation. That is the comment I wanted to make to your comments in terms of Bill 208, my first sheet, and the second presentation from the makeup of the Electrical Utilities Safety Association of Ontario—I think we are doing some of the things in it. I do not totally agree with the Municipal Electric Association presentation. I do not think there should be equal representation on the board of directors, because I do not think the unions represent all of

the workers, so there should be some representatives from nonunionized workers.

For example, in our own safety association—and I am only talking about EUSA now—I think we have taken the first steps to doing that, having union people on the committees. As I said, in our industry, one of the key committees—and I do not say that as chairman of the committee, but it is a key because of the things that happen in our industry—the rule book is one of the most important committees there. We have invited the unions to participate. Unfortunately, only the International Brotherhood of Electrical Workers has taken up the offer. Mr Moore has been on our committee. For two years it has been relatively inactive, but it is now becoming active because we are revising our rule book, starting on Friday of this week.

So in that sense, I do not agree with the entire MEA position, and if that is the sense you got, then you are correct, but I do agree with parts of it in consideration of some of the smaller employers. I am not sure how they can comply with some of these requirements in terms of a dollar cost or a manpower situation where they do not have very many employees to begin with. If you have a management rep and a union rep, a workers' representative, for a large number of them, that may be the entire crew they have. So they are working at that, I guess on a day-to-day basis, without the formality of the legislation being there.

Mr Mackenzie: The focus now, as you say, even in your own safety association, is on reviving it, yet with the exception of Mr Moore, you do not have a labour representative on it, looking at the listing of names you have on it, and you yourself say it has not been that active in the last couple of years. Would it be fair to ask if it is the current interest that is certainly coming to the fore in the whole health and safety issue that is now getting your association active again?

Mr Hebert: I would say certainly that was the motivating factor a couple of years ago when Mr Moore, CUPE and the United Electrical, Radio and Machine Workers of Canada were invited to sit on both our rules and awards committees. As I said, only one has taken up the torch at this point in time. He has sat on that awards committee. Awards has been very active and he has sat on that committee for the last two years. He has been on the rules committee, although it has been relatively inactive, because our rule book committee only gets really active probably two out of every five years.

Mr Mackenzie: Is he one of the 12 or 13 board members you listed?

Mr Hebert: No, he is not.

The Chair: Mr Carrothers, the last word here.

Mr Carrothers: More than one word, I hope.

I was intrigued by your comments on fines. You have indicated that you sort of feel that larger fines work against the legislation, and also that the level of fines would likely give rise to significant increases in retail electricity and water rates. I was curious about that.

Surely the size of the fine is a measure of how serious the Legislature takes the matter which the fine is meant to be the penalty for not dealing with. Would it not be the case that the way to avoid paying these heavy fines would be to correct the matters that the fines would be levied against? I am sort of curious as to why you are linking increases in fines under this legislation to increases in utility rates at the municipal level.

Mr Hebert: You do not think those costs would be passed on?

Mr Carrothers: I am sure they would be, if they were incurred, but the point of the fine is to correct the situation. Is that not the best way for the utility to avoid having that cost to pass on?

Mr Hebert: No question. I think the record in our safety association, which represents those utilities, is one of the best. If you look at our rates compared to the other associations, the other hazardous kinds of work that are done in this province, in terms of hazardous jobs, I think our industry has one of the best safety records around. So I think what you are saying is what we are doing.

Mr Carrothers: So why are you concerned?

Mr Hebert: For smaller utilities, this could wipe them out. A \$500,000 fine could wipe them out. It is not that they are not doing it.

Mr Carrothers: But it is within their power to avoid the fine. The problem I am having with this is that it is within the power of the utility to avoid the fine. Therefore, it is not a cost that has been imposed upon them which they have to pass through.

Mr Hebert: I guess my feeling is that you can certainly legislate certain things about safety, but you cannot legislate safety overall. To me, safety is an attitude, and I do not know how you can legislate that. Whether it is a management or a union attitude, that fine may not have any relationship to that attitude. A small utility may be trying to do its best job and get wiped out. I am not talking about a large one.

Mr Carrothers: Is it not part of legislating an attitude, though, putting in place penalties that make people take the situation seriously?

Mr Hebert: Okay, if you think you can legislate an attitude.

Mr Carrothers: It is hard to legislate, but that is one of the things you can do to try to create it, is it not?

Mr Hebert: Sure, make the penalty severe.

Mr Carrothers: Severe, so that one takes it seriously.

Mr Hebert: But to jump from \$25,000 to \$500,000 seems to be a fairly hefty jump.

Mr Carrothers: Or a major increase in the allotments of seriousness to be placed on the issue.

The Chair: Mr Hebert, thank you very much for your presentation. We are out of time, but we thank you for it.

THUNDER BAY AND DISTRICT INJURED WORKERS SUPPORT GROUP

The Chair: The next presentation is from the Thunder Bay and District Injured Workers Support Group. I certainly recognize Mr Mantis from all sorts of historical events, including Bill 162. Mr Mantis, we do welcome you and your colleague to the committee this afternoon. We look forward to your presentation, and I think you know that 30 minutes is the limit. If you will introduce the gentleman who is with you, we can proceed.

Mr Mantis: I think he will start.

Mr Caissie: My name is George Caissie. I am the president of the injured workers group here in Thunder Bay. I will be introducing Mr Mantis after a short say here.

I would like to say a little bit about neglect, negligence, as you have it. I know an employer negligent on the job, with the result of killing somebody, has to pay an increase in his compensation for the death of a worker if there are too many. If myself or anybody else is negligent in the death of somebody out in public or in any walk of life, I would have to be charged and dragged through the courts and charged with criminal negligence and dealt with that way.

I do not understand why employers can be negligent and nothing happens to them. They do not go through the courts. Why do the rest of us have this penalty to pay and it is used by Canada's laws as a deterrent, but the same thing does not happen to employers? That is about all I had. I will let you go, Steve.

1640

Mr Mantis: We thank you for the opportunity to address Bill 208 today, but before we begin our comments on Bill 208, I would like to take a bit of a look at the present situation. You have all heard that a worker is killed every day in Ontario. At some point you probably say to yourself: "Well, what does that mean? People die every day. Lots of people die every day. What's the big deal?"

I think that, to better understand a little bit about the situation, we have to compare what is happening in Ontario with what is happening in other parts of the world, and I think the one country I would like to compare it to is England, which is one of our founding nations.

Compared to England, we have an accident rate of two and a half times; that is per 1,000 people. Just think about that for a second. We are not talking about being 10 per cent over England, or 20 per cent; we have 250 per cent more accidents per 1,000 people in Ontario than in England.

Do you think we are doing pretty good? Do you think this legislation is going to make us the leader in the world? We have a lot of catching up to do before we start talking about being a leader, and I think we need to realize that. We are not leading anybody in health and safety. We have a long way to go to catch up to what is happening in some of the other industrialized nations.

I wrote up this whole brief here, and I have a lot of good points, but I start hearing all the discussion here today and I get quite worked up. We talk about attitudes; safety is an attitude. We talked about a partnership and an internal responsibility system.

What is the attitude that I am hearing? I am hearing that employers are afraid that workers are going to go and take this right to refuse work, this right to shut down the workplace, and they are going to use it every day of the week and they are going to go home and watch soap operas or they are going to go and have coffee or something. Is this really what you think the workers of Ontario are going to do?

This attitude is something that is going to be a major problem in our economy. There is this really big gulf between employers and workers: Workers cannot be trusted. The employers have the power and workers want some, but they cannot be trusted. "By God, we cannot trust these guys to start making decisions about their own work. All hell is going to break loose." The fact of the matter is, they make decisions every single day, day in and day out.

I have been on both sides—I have been in management, I have been an employer and I have been a worker—and I do not see a hell of a lot of difference in the people who occupy those positions. Some are good and some are not. If you are talking about creating a safe workplace, then what you have to do is get everyone involved. It is pretty simple.

That is what the minister is telling us. The minister is saying the people who have to make the choices are the people right there in the workplace. I agree 100 per cent.

But how are we going to do that? How are we going to give the people who are in the workplace, who happen to be 99 per cent workers, the power to create a safe workplace, because it takes power? Right now, in most workplaces the employer is the boss. What he says goes. If you do not agree, you are gone.

There has to be some sharing of that power in order to allow those people to participate in the process, and real participation, not, "You can send a list of infractions up to the head office once a week and maybe we'll do something about it and maybe we won't." To me, that is not a real process.

We talk about the cost of health and safety. Let's look at the cost for just a second. In Ontario, employers have paid somewhere around \$2.6 billion in the past year for workers' compensation benefits. That is a fair amount of money. If we had an accident frequency rate the same as England—and this is not a big pie-in-the-sky thing; this is another industrialized country—we are looking at saving \$1.6 billion.

The government has said, "We've got a commitment to health and safety and we're going to put away \$44 million a year and we're going to give this to the people to do training." There is \$1.6 billion out there waiting to be saved. I think that three per cent of that, which is somewhere around where that \$44 million comes in, is not adequate. I know, from a business perspective, you expect to invest quite a bit more than three per cent to get 100 per cent return, and I think the government, if it is serious about this safety in the workplace, if it is serious about not having people hurt, needs to put the bucks up front. The saving is there.

We have proposed a mere doubling, which brings you up to six per cent of what a reasonable savings could be. But it could go a long way, and where that money needs to go—and we support 100 per cent what the minister is saying—is training: training for the people who are doing the work on how to do the work safely and how to

resolve disputes, because that is what it comes down to.

You are working on a job site, you are working construction and the scaffolding is not set up right and the foreman says, "Go get up on the scaffolding and do your job." That is a real life situation. What are you going to do? If you do not get up there, he is going to say, "You're fired." So you have to find a way to resolve that dispute—right here and now, not next month, not in arbitration. Arbitration is going to be too late for that guy who falls down and gets killed or gets hurt. You need a way to resolve it right now, and you have to resolve it right there on the job site.

When we look at Bill 208, we see a lot of potential there. The minister has certainly said this is what he wants to see; he wants to give those people in the workplace the power to make those choices. But what we have been hearing, and of course we have not seen any of the amendments, is: "That's not going to happen any more. Workers can't be trusted. We can't trust them. Even though this guy is certified, and even though his certification could be revoked, which means that he's going to be blacklisted, we can't trust him to make a responsible decision." That, to me, is gutting the bill.

1650

Right now, employers at any time can shut down a job and make it safer, and well they should, but if we are talking about creating a partnership here and sharing the responsibility and giving the workers responsibility, we have to give them the power as well. They go hand in hand. Really what we are asking you to do is to think about how serious this situation is and consider how we compare to Mother England. Do some homework. Find out what is happening in other parts that is working. I speak on behalf of those people who have been injured, who have been through the workplace accident. We are the price of production. We have seen the suffering of thousands of men and women in Ontario.

If there is one thing that these people say to me over and over, it is, "Is there something I can do to help other people so that this doesn't happen to them, so that at least something good will come out of this?" That is the job you men and women have now. What are you going to do about it? How in conscience can you allow us to spend \$2.6 billion for the people after they get hurt, which oftentimes is inadequate, and say, "But we'll only spend \$44 million over here to prevent it." What kind of message is that? Certainly the \$500,000 for a fine is sending a clear message, "Hey, this is important." Let's take that through-

out the whole bill. Let's send that message clearly on all aspects so that priority number one is safety.

I think confidence and the sharing of that responsibility and power will pay off in productivity. People in the workplace want to feel useful. These are capable people. Give them the power to make some of these choices and they will repay it in a happier and safer workplace and there will be more production.

There are a number of things in the brief that I am sure I have not touched on, but I think we will give you a couple of minutes if you want to ask some questions.

Mr Callahan: I am speaking for myself only. On page 5 you have asked that Bill 208 be amended so that all workers continue to receive regular pay during a stop-work order. You obviously heard my comments to the previous group that was here. You have put that forward. What would you think if that continued to say "only if the stop-work were justified." What that does is put the burden on the certified worker to make damned certain he does not go to a stop-work order but resolves it before that, unless he has a pretty good case. It puts the employer in the same position. If he wants to play chicken, he has to be damned certain it is not something that should be rectified. Perhaps in that way you would get many of them rectified before they ever got to a stop-work order and have pressures on both sides.

Mr Mantis: It would be justified to, say, an independent appeals body or something like that?

Mr Callahan: It would automatically go to an appeal body that would decide whether it was justified or unjustified. The problem I have, and as I say, I speak for myself—it is a personal view—is that it seems to me that the whole nub of this and the most basic concern that workers and management have is that the workers want to have a safe workplace and many managers and owners, I think, want a safe workplace, but you do have those who may not have that great a concern. They think you are going to abuse it. You think they are going to do a rotten job in looking after the workplace.

If you had a balancing of those two, a certified worker who would run the risk of the slings and arrows of his fellow employees if he called a bad shot and they wound up not getting their salaries—that to me seems to be a greater penalty than being decertified. I am not quite sure what taking the certification of a certified worker away from him or her does. It is not like a degree. I am

sure they are not being paid any more for being certified workers.

It would seem to me that would put the burden really where it is and make these parties work out their own differences, and also catch the people who were just determined to run a slipshod operation and not care whether a worker gets injured or not. Those people would be subject to two penalties, having to pay the workers and also subject to prosecution with the fines that are set out in Bill 208.

As I say, I only speak for myself. That may never come to fruition, but I would just like to run it by you and see what you think of it.

Mr Mantis: Just off the top, I think it would be better than what there is now. Certainly very few people would be willing to stop work if all their fellow workers were not going to get paid until that situation was justified. I think he would have to be a very strong individual to do such a thing. If that is the goal, if the goal is to stop it if it is unsafe, you want to encourage that to happen. You do not want to discourage it.

Mr Callahan: And if the goal is to encourage the employer to rectify something that is unsafe, you are getting it the same way the other way.

Mrs Marland: Steve I remember very well your presentation on Bill 162 and I think today you are something like 293th. What is it? Anyway, I am only saying that because of the fact that as the 293rd brief before the committee—not all of those have been presented in person, obviously—you are the only person I can recall who has been here in person who did not read his brief. It is part of your style and your very sincere and very real commitment to protecting workers who are not injured and serving those whom you represent who have been injured. I find you a very dynamic individual in your presentation and your sincerity.

You used a very strong argument about the English comparison. We have been talking here in the last four or five weeks about examples in Sweden and Victoria. I wonder if you can elaborate a little bit more on the English comparison, because I am not really familiar with what the differences are between Ontario and England in terms of labour laws and protection for workers.

I must say that I feel that some of the examples we have been given over the last four or five weeks have been terrible violations of our existing laws in terms of worker protections in Ontario. I feel very frustrated when I hear those examples because I think: "What's the point in passing more legislation? We don't even get the

protection for workers under existing legislation." That comment aside, can you tell me what the differences are between England and Ontario in a major way?

1700

Mr Mantis: Now I am embarrassed because I have not really studied the English system very well. We are strictly a volunteer organization, so any time we get to prepare and find out information is really limited. So I glean little facts here and there and we use them as best we can.

I suspect that what one of the differences is, and I think it would be a real key, a more traditional or whatever, where the workers actually have more power and more say in what goes on in their workplace. I think this is the only way you are going to achieve safety, if all workers in Ontario have safety as a priority and are trained in safety, so that it is not left up to one certified member who is working at one end of the plant, and he or she is the only one responsible for safety. Everyone has to be responsible for safety. Everyone has to keep it in his mind, be aware and be willing to act on it.

Mrs Marland: That is where the internal responsibility system comes in.

Mr Mantis: No comment.

Mrs Marland: But what you have just said is exactly what the internal responsibility system is about, is it not?

Mr Mantis: Yes, that is right, and people feel they are able to do that without threat or reprisal.

Mr Wiseman: I could ask one along the same area as my colleague. Steve, you mention you do not know about the English system that well, but we were told the other day by one of the car manufacturers, or the parts—I am not sure which—that its superiors were asking them about why they had so many accidents in Ontario doing the same job compared to Florida. When they compared the state of Florida to Ontario, they found that our laws were much stricter at reporting accidents and about certain types of accidents that were lost-time accidents compared to in the United States, I guess they put a bandage on and go back to work; I do not know.

They did not have as many and I wondered if England were something the same, that their laws may not be just as strict and lay out what lost-time accidents—

Mr Campbell: Do not criticize Maggie Thatcher. I am sorry, Mr Chairman.

Mr Wiseman: I just want to make sure, as Steve made a remark that England was so much

better than us, that we really were comparing apples with apples and oranges with oranges. When we compare that, we really should know that the laws are pretty equal to start from, that we are playing from a level playing field. If a person read the brief and I am sure wanted to be that way, and thought we were really terrible—maybe our laws are stricter and we are not as bad maybe as the brief would paint us to be.

You practically answered that with Mrs Marland when you said you did not know what the laws were in England compared to Ontario. But if we knew that, we would be able to judge that part of the brief a little better.

Mr Mantis: I certainly do know that in Ontario, although we have strict legislation in terms of reporting accidents, there is a growing trend to not report accidents. There is a growing trend among unionized workplaces to tie in right away with employee assistance plans, to other benefits that have been negotiated because it is such a pain in the arse to go through the Workers' Compensation Board. There is a trend, certainly, among employers since experience rating has started to not report accidents because the more accidents you report, the higher your rates go up, and the paperwork, my God, you get files and reams of paper about this accident that ended up costing you \$25. It is just a headache.

Mr Wiseman: Like Mrs Marland, I would like to comment that you did a real good job in your brief, and if I ever had one to present I would ask you to come along and present it for me.

The Chair: Mr Caissie and Mr Mantis, we thank you very much. I hope you two gentlemen will continue to do the good work you do in Thunder Bay and know it is appreciated.

BUCHANAN GROUP OF COMPANIES

The Chair: The final presentation of the afternoon is from the Buchanan Group of Companies. Gentlemen we welcome you to the committee. I know you are representing the Buchanan Group of Companies. Certainly for those of us from northern Ontario the name Buchanan is not new to us. Welcome to the committee.

Mr Inglis: I would like to introduce the person on my left, Ron Krupa, who is personnel manager at Great West Timber Ltd, which is one of the companies we represent in this brief.

I would like to thank you for giving me the opportunity to make some of the views of our companies known to you. I will stick pretty close to the text because I know the time is running

short and I think you want to get out of here at 5:30.

My name is Tom Inglis and I am director of planning and development for the Buchanan Group of Companies. We have five sawmills in northwestern Ontario. They are Northern Wood Preservers in Thunder Bay, Great West Timber Ltd in Thunder Bay, McKenzie Forest Products in Hudson, Atikokan Forest Products in Sapawew and Dubreuil Forest Products in Dubreuilville.

We employ over 2,200 people in our mills and bush operations at the five locations. We feel that many parts of the act are fine the way they are and do not need changing just for the sake of change. We feel that some of the changes recommended in Bill 208 would not improve safety in the workplace. We support the concept of health and safety in the workplace and agree that anything that can reduce the risks in the workplace is needed.

I have gone to the background paper and I have taken the items in order and some of our comments on each one.

1. Joint health and safety committee: We have joint health and safety committees working in our plants and we feel they work well and will continue to work well, providing we have the same co-operation between the worker representatives and the management representatives. The only problem we have had is there is a lack of worker willingness to serve on these committees. It is pretty well in all our operations that we have found that.

2. Inspecting the workplace: We feel our present procedure is effective and Bill 208 would only be overkill. Do not make any changes to the present act. If the perception is that in some instances, ie, extremely poor record versus balance of business in some industry, then maybe the inspector could order for a period of time more frequent or thorough inspection. We presently have worker reps who are an extension of the committee who take part in the inspection of their own work sites. The whole committee inspects all work sites once a year. This system works well for us and no change is needed.

3. Recommendations of the joint health and safety committees: We feel the present act and our JHSC is working well and does not require any change. The reason for our position is that in situations where the business is unionized and the union wishes to use the JHSC as a platform, the union side of the committee will use the written denials for its own purposes.

1710

4. Training members of joint health and safety committees: We feel the current act is fine as stated. We feel our committees have representatives who are well-educated in our workplace health and safety standards. We support the idea of increasing the control of workplace health and safety but this can be done under the present setup.

We could support further training. However, as this is a joint venture, there should also be a joint venture in sharing costs of training. Participants should be prepared to avail themselves of the training even if the remuneration is not at the premium rate. We have found that in certain cases the employees, because it is after the work shift, think that it should be time and a half. We feel if we are going to participate jointly in this thing, it should not be at the premium rate.

The training is being done and legislation is not required to enforce this. One of our biggest concerns is that presently workers are being trained totally by labour organizations with no input from management. Labour wants to control all of the training and just give management the bill to have the employees taught in what they decide.

5. Setting province-wide standards for safety training: We feel that this change would add a substantial cost to the employer. We do not object to the concept but would like to be assured that the additional cost would not outweigh the benefits.

There is nothing wrong with the present situation, since ultimately survival of the best is taking place. Industry must achieve better health and safety results. Cost forces this to happen. Industry will go to those bodies which will provide the best end result for the least amount of dollars.

6. Employer's obligation: We have an occupational health and safety policy program in place. This is overkill. The employers will automatically do this anyway if this mechanism will result in better end results.

7. Right to refuse dangerous work: We see nothing wrong with the present provisions so we would recommend that we maintain the present provision for work refusal. If Bill 208 were implemented, we are concerned as to what weight or size of an object is too heavy to lift safely. Each industry is different so the meaning of safe work activities would have to be spelled out in much more detail.

We feel that this procedure will be affected by the mood of the employees and will become

another tool to get concessions from management.

There is nothing in the legislation which would allow for fines to a union that is proven not to have acted in the spirit of co-operation.

8. Duty of care: We feel the current act is sufficient. Bill 208, by adding directors and officers of corporations, would have to be clarified. Outside directors and officers are elected for their expertise in, for example, finance, who do not have a working knowledge of the workplace, and therefore a company would not be able to obtain the outside expertise that these people would bring with them. They just would not let their names stand if they could be implicated.

9. Incentives: My understanding is that the Workers' Compensation Board already has this power.

10. The Workplace Health and Safety Agency: We agree with this agency being established.

11. The health and safety association: We agree that this should take at least two years to implement and would suggest that each of the present directors take a worker partner to the safety meeting so that there will be a smooth transition.

12. An approach to the authority to stop dangerous work: There is nothing wrong with the present legislation, so leave it alone. If it were to be changed, then the authority to stop work would have to be made jointly by both employer member and employee member.

We support the conclusions and recommendations of the Canadian Federation of Independent Business and would like to comment. You have had their recommendations and I will just leave it. The comments I have are very short and rather than reading that and making the comments, I will just leave that.

With that, I would like to thank you very much for the opportunity of appearing in front of you. I noticed on the list of participants today that I guess we are the only independent company that has come forward. Again we appreciate the opportunity to appear in front of you.

Mr Wildman: I note at the end you listed your recommendations, which you did not go through. From the Canadian Federation of Independent Business, do you agree with that organization's characterization of this bill as the unionization and intimidation bill?

Mr Inglis: That part I did not comment on, I do not think. No, I just commented on their conclusions and recommendations as far as our organizations were concerned. I really did not

intend to make any comments on other than the recommendations that we feel apply to us.

Mr Wildman: Just a couple of other questions: On page 3, you said you did not see any reason for changing the present act as it related to the joint health and safety committees and then you said, "The reason for our position is that in situations where the business is unionized and the union wishes to use the JHSC as a platform, the union side of the committee will use the written denials for its own purposes." Could you elaborate on what you mean by it would "use the written denials for its own purposes"?

Mr Inglis: I guess the best way to explain that is that there have been a few situations we have seen where the joint health and safety committee has written up a case where an employee was negligent. It was taken through. We agreed with it. The committee agreed with it. Then it came down to when it was presented that the union came back and said that was not the case and the thing was thrown out and it did not go anywhere. The employee was reinstated in the same position he was in. There was no reprimand even though the union representative and the management representative agreed and wrote it up. It was taken away from us and there were no repercussions to the employee for an unsafe act.

This was a case where we are lucky no one was killed because he was putting logs into a hot pond. He did not bother to check the stop sign they have there. He did not look at it. He dumped the logs in. There was a fellow straightening the logs out in the hot pond at that time. It was just a terrible mistake. The fellow was not hurt, but he certainly could have been.

Mr Wildman: I still do not quite understand because in that kind of a situation, surely if the worker did not follow proper procedure and acted negligently, he could be reprimanded.

Mr Inglis: We thought so.

Mr Wildman: If you said the health and safety committee, both the union rep and the management rep agreed, I do not quite understand the problem.

Mr Riddell: Where did it go from there?

Mr Inglis: It went, I think, to the union as a grievance and we lost the grievance.

Mr Wildman: The only other question I have is in relation to page 6, where you say in regard to the authority to stop dangerous work: "There is nothing wrong with the present legislation, so leave it alone. If it were to be changed, then the authority to stop work would have to be made jointly by both employer member and employee

member." Would you not agree that already management has the unilateral right to stop work for whatever reason? It could be for safety reasons, it could be seasonal market reasons.

1720

Mr Inglis: Oh, yes. Definitely.

Mr Wildman: If that is the case, could you explain why, in the Northern Wood Preservers, management did not stop work to ensure that the stacker Paul Jackpine was working on did not have an automatic ejection system on it, after it had been discovered that the other similar machine had one and it was decided that it would be preferable to eliminate the automatic ejection from that other machine? Why would management not just unilaterally decide to fix this machine in order to ensure that it was safe prior to an accident happening?

Mr Inglis: I guess there are a lot of circumstances there, but one is that the lockout was not used by the employee. Had the proper procedure been followed, the accident would not have happened.

The Chair: Can we move on?

Mr Inglis: I guess we will have to.

Mr Wiseman: I just wondered, on page 5, where you mentioned that you feel that unions should be fined, I take it that is if they stop work and it was a frivolous complaint for stopping. I have asked at different times—when the unions ask for fines much greater than the average \$2,000, and we know in the new bill it is \$500,000; they want the companies to be hit much harder and I felt that it was not really fair to ask for that at that end—that workers be paid—even though there may be the worker who stopped it, there might be many of his colleagues whom they are looking for pay for as well—and only slap the certified worker on the wrist by decertifying him. I felt that management should have the right, if that was a frivolous complaint, to fire him.

Would you go along with something like that and think it is making the playing-field a little more level? What you are asking for here—we found that maybe in your industry everyone is unionized or the biggest part of them are unionized; many workplaces across the province have more nonunionized workers than unionized—and whom would you fine in that case? I think if you could fire the person if he made a frivolous complaint and cost you as an employer a lot of money frivolously, would you be satisfied with that rather than attacking the union?

Mr Inglis: Yes, I would. I had not thought of it quite that way because all our operations are unionized and I guess I did not look beyond that. Yes, I think that could well be a solution to it.

Mr Dietsch: In relation to page 2 of your brief, you indicate that the only problem you had with joint health and safety committees is "a lack of worker willingness." What do you mean by that?

Mr Inglis: Not the union, the employees. They work their eight hours. They do not want to get involved in it too much. They just keep saying: "Well, you know, I don't want to be bothered with that. I've got my job and when I'm finished I want to go home."

Mr Dietsch: So your training process is all after hours?

Mr Inglis: Not all, but there is some.

Mr Dietsch: Do they participate in the training during working hours? The extension of the training that you have developed after hours they do not participate in.

Mr Inglis: They do participate kind of reluctantly, I guess I would say.

Mr Dietsch: Is the training program supported by the union?

Mr Inglis: Our training program?

Mr Dietsch: Yes.

Mr Inglis: I would say yes, it must be, because we have not had any complaints, and I think ours works fairly well.

Mr Dietsch: Who represents your workers, the Canadian Paperworkers Union?

Mr Inglis: The CPU, yes, in some cases, and IWA and others. The mills in Thunder Bay are CPU and the mills in Hudson and Sapawe are IWA.

Mr Dietsch: Many of the presenters who have been before us have indicated the need for increased training. The opportunity to share that knowledge with more workers, both from the union side and from management side, has supported more training. That is why I find those kinds of comments a little disconcerting after having heard what we have heard from so many other presenters.

Mr Inglis: We certainly would support the idea of more training because I do not think you can get too much of it, but these were just concerns that we had and this is what we found within our organization.

Mr Dietsch: Okay. I will yield to my colleague, Mr Riddell.

Mr Riddell: I was interested in Mr Wildman's line of questioning and it ended by your saying if the proper procedure had been followed, the accident would not have happened. I am a little unclear as to whether the accident happened because of negligence of the worker or because of negligence of the employer. What was the procedure that should have been followed and was not?

Mr Inglis: There is a lockout system. There is a key system. You turn it off and that completely shuts down that section. Before they get off the pedestal that is the first thing they are trained to do. That cuts all the electricity to that area. Then he can proceed and do whatever he wants when he comes back. It is called a lockout system and it was not faulty.

We provide it and hopefully it is used in most cases, but I suppose people are not as cautious as they should at some times and they have a tendency to—Maybe they had been there long enough and they do not think it is necessary, that type of thing.

Mr Riddell: So the safety device was actually part of the equipment but was not used by the employee?

Mr Inglis: That is correct.

Mr Callahan: I would like to try this on you. If the penalty, if you want to call it that, looking at it from the standpoint of the employer and the employee, were such that if a certified worker came to the point where he wanted to have the work stopped and if in fact it was determined by an agency, let's say—if this agency were a board that could decide whether it was right or wrong to have done that—if the penalty to him would be that his fellow employees are not paid during that work stoppage, but on the other side of the coin, for the employer, if the employer were faced with a decision to either rectify something and make it safe or allow the work stoppage to take place, the penalty to the employer would be that if it turned out that this agency decided that that work stoppage was justified, the employer faces the actuality of having to pay all of the workers' wages during that work stoppage.

Would you see that as an acceptable balancing, for two purposes? Number one, it would mean that the certified worker would have to be pretty darned certain that he had a legitimate reason for doing that lest he suffer the slings and arrows of his fellow employees; on the other side of the coin, the employer would be faced with a decision whereby if he was wrong, he would have to pay all those wages during the work stoppage.

It would seem to me what would happen is that the employer and employee, or a certified worker and certified workers from management may be in a situation where maybe the certified worker says, "That's an unsafe situation," and the certified manager says, "It may or may not be, but it's probably cheaper to fix it than to run the risk of going down the line to this ultimate decision."

It seems to me that if you had that it would overcome this concern by management that labour is going to misuse it and by labour that management is going to prevent them from exercising legitimate rights. It might also achieve the end which I think both management and labour want, a safe workplace. What do you think of that?

1730

Mr Inglis: I think that concept might have some merit, yes. I would think there is something to it.

Mr Callahan: Because it would seem to me that the penalty of having the admonition of his fellow employees, as opposed to being decertified, is a far greater penalty than being decertified. Being decertified, I am not sure what that means or does. I guess, in the ultimate, the employer—in the case of an employer who was totally unreliable, who was just running a place of work which is dangerous to all extents—could be faced not only with paying the employees their full wages, but also with being prosecuted with the penalties that are presently in the act or even being prosecuted criminally if it were determined there was criminal negligence.

Mr Inglis: Certainly. We do not disagree with that. We want a safe workplace for all employees, that is for sure. I do not know, the fine seems a big steep from what the original amount was.

Mr Callahan: That is inflation.

Mr Inglis: I wish the price of lumber would go up similarly to that.

Mr Callahan: I just wanted to run it by you and see whether in fact you could live with that or management could live with that.

Mr Inglis: I think we could.

The Chair: Are you part of the experience rating system for the WCB?

Mr Inglis: Yes.

The Chair: Do you have a high assessment with the compensation board?

Mr Inglis: In our mills, no.

The Chair: In the bush?

Mr Inglis: In the bush it is not the best.

The Chair: Do you have problems with the workers' compensation assessment system as we sit here? You have problems with them, do you not?

Mr Inglis: Yes, we do.

The Chair: Is that being sorted out?

Mr Inglis: We think it is, yes.

The Chair: Is that partly because of the high accident rates in your companies in the bush?

Mr Inglis: No. There is a combination of different things. There were some accidents all right, but getting into it is pretty complicated.

The Chair: I know how complicated it is, yes.

Mr Inglis: I think the Workers' Compensation Appeals Tribunal is having a hearing in March and I guess it will sort it out.

The Chair: Has your safety record improved in the last five years?

Mr Inglis: I think it has, yes.

The Chair: Are you satisfied now that you have a safety record that is appropriate for the assessment you are receiving from the board?

Mr Inglis: We do not agree with the method of assessment.

The Chair: Do you agree with the experience rating system at the compensation board where you pay according to your accident rate?

Mr Inglis: Not really, no.

The Chair: You do not think companies should pay according to their accident rate?

Mr Inglis: Are you talking about the new experimental experience rating system?

The Chair: Yes, I am.

Mr Inglis: No, we can have an operation with 10 employees and one accident and the rate just bankrupts people. This is what has happened to some of our contractors.

The Chair: We are talking about the Buchanan Group now, not separate contractors. Does the wording in this bill, in which the person who owns the licence is responsible for the committees, affect Buchanan Group?

Mr Inglis: No, I do not think so.

The Chair: Thank you very much for your presentation.

That completes our hearings this afternoon. We have enjoyed the day in Thunder Bay. I hope I speak for all members. We convene again tomorrow morning at nine o'clock in beautiful downtown Dryden.

The committee adjourned, at 1730.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Publications

No. R-18 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on Resources Development

Occupational Health and Safety Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Tuesday 20 February 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 20 February 1990

The committee met at 1001 in the Sunset Room, Best Western Motor Inn, Dryden, Ontario.

OCCUPATIONAL HEALTH AND SAFETY STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Chair: The standing committee on resources development will come to order as we continue the public hearing process looking at Bill 208. We have been on the road now for over a month, and this is the completion of the public hearings on this bill.

By the way, the Legislature assigned the committee the task of holding hearings on this bill, and tomorrow we start the clause-by-clause examination of the bill. Having heard presentations for the last month, tomorrow we sit down and the Minister of Labour appears before the committee, then we start the clause-by-clause debate to determine what, if any, amendments should be made to the bill. That will go on for a couple of weeks, the Legislature opens for the spring session on 19 March, and then on 26 March we must report this bill back to the Legislature. Whether we have completed the clause-by-clause part or not, it will be reported back to the Legislature for final disposition.

The membership on the committee is made up in roughly the same proportion as membership in the Legislature, which means there are six Liberals, two Conservatives, two New Democrats and myself as chairman. I will introduce the members of the committee to the people from Dryden who are here.

Doug Carrothers, Oakville South; Mike Dietsch, St Catharines-Brock; Sterling Campbell, Sudbury; Jack Riddell, Huron; Maurice Bossy, Chatham-Kent; Bob Callahan, Brampton South; Doug Wiseman, Lanark-Renfrew; Bob Mackenzie, Hamilton East, a name you recognize; another name you recognize is Howard Hampton from Rainy River. I am Floyd Laughren. I represent the riding of Nickel Belt, which is north and west of Sudbury.

[Applause]

The Chair: First time in all the hearings.

We are pleased to be in Dryden, and I would like to welcome his worship, Tommy Jones, to the committee hearings this morning. We will be hearing from Mr Jones this afternoon. He will be making a presentation to the committee. We welcome you to the hearings, mayor.

CANADIAN PAPERWORKERS UNION

The Chair: We should begin. We have a full day of hearings that takes us through to four o'clock, and the first presentation is from the Canadian Paperworkers Union. If the people will come to the table, we can start. We are quite informal. There are some rules. One of them is that there is only 30 minutes for each presentation, and the 30 minutes can be taken up by the people making the presentation or they can save some of that time for an exchange with members of the committee, which we always enjoy. So for the next 30 minutes, lady and gentlemen, we are in your hands. If you will introduce yourselves, we can proceed.

Mr Chasoway: My name is Dick Chasoway. I am the Local 105 recording secretary and safety steward. I represent approximately 650 to 700 members in my local. To my left is Marg Wallace, who is vice-president of Local 1323, and to my right is the president of my local, Mark Weare.

On behalf of the members of locals 105, 1323, 324, 49, 238, 306 and 321 of the Canadian Paperworkers Union, welcome to Dryden. We represent nearly 3,000 workers in Dryden, Kenora, Fort Frances and Atikokan. We also represent Canada's most productive industry, the pulp and paper industry.

Our view of Bill 208 is that it was obviously thought up by people who have no idea of how serious the issues of health and safety are in Ontario. These bureaucrats in the Ministry of Labour probably think legislation should balance the interests of workers and management; it should be fair to both parties.

What has been missed is that the present law is very unbalanced. Almost all the power to decide what is safe and healthy is in the hands of management, and management must always be concerned with the bottom line. Even their safety measures are motivated not by compassion for

human suffering, but by a desire to keep down their workers' compensation premiums. We live in a sick society, and it is a sick government which allows hundreds of thousands of workers to be injured every year, many of them permanently.

Bill 208 concerns us because we work in very hazardous industries. There are many graves in our communities occupied by our members who died young, while at work. Personally, my wife has seen four, as she sees work boots after she puts them in the morgue. That really upsets her, because I wear work boots every morning to work. There have been four fatalities in the past three years alone. There are also many, far too many, of our members who have been disabled for life and exist on small pensions from the Workers' Compensation Board. Occupational health and safety means more than a law to us; it is a survival strategy.

We represent workers in the pulp, paper, lumber and logging industries. Our members suffer far more than their share of back injuries, amputations, repetitive strain injuries, serious cuts, broken limbs, white finger disease and hearing loss, to name only the more prevalent injuries. We do not complain very much; no one will listen anyway. But now that we have an opportunity to directly address the lawmakers, we want to tell you that we are disgusted with your attitude about the value of human life.

It is people like ourselves, who work in basic resource industries, who have made Ontario the wealthy province that it is. Much of that wealth was created at the expense of our lives and limbs. We think it is time to put a stop to this unspoken but very real attitude that life is somehow cheaper in the north, that we expect to get injured in our jobs and that in certain kinds of work, logging, mining, etc., we will never have perfectly safe working conditions.

Almost every hazard in our industry could be solved with money, in the form of better safety equipment, better-designed work processes and environments and somewhat lower productivity, so that workers do not have to endanger themselves to meet unrealistic production quotas. But more important than money is control over working conditions.

1010

Under the present law, workers have no say in their working conditions. All they can do is protest and withdraw their labour briefly if, and only if, it is quite clear that their safety is in danger. Their representatives on health and safety committees have no power to change

unsafe, even dangerous working conditions. All they can do is make recommendations which can be ignored by the employer.

That is if the committees even exist. Some mills in our industries did not even have joint committees until recently. I will just clarify that one a bit. I am on a pulp and paper tripartite committee. We just finished up this week. I just got back from Toronto today. During the course of investigating committees, and I was on that subcommittee of joint health and safety committees, we found a major employer of the pulp and paper industry which did not have a legal committee set up. That was 10 years after the last law was introduced. To me, it is disgusting.

We wonder why there were no committees in place when inspectors from the Ministry of Labour had been going since 1978. That is a government agency that is supposed to be there to help protect workers. Are their hands so tied that they cannot tell these workers: "Look, you do not have a safety committee. These are your rights"? Or do they have to wait until workers come up to them and say, "Look, are we being represented properly"?

We have another case; it is unionized and it is in Dryden. The fellow approached me at our medical clinic. He wrote me a letter stating all the hazards in the workplace. I got hold of the Ministry of Labour and I proceeded to try to represent them in some form, since they were scared of losing their jobs if they said anything or if they made it too public.

This person lost his job because the Ministry of Labour, after I talked to Vic Pakalnis, the director, and he sent me to the director of the mining industry, finally sent a representative out there. One of their inspectors looked at the place, wrote them a bunch of orders and sent me back a letter saying it was none of my business next time.

If committees have been in place or supposedly in place since 1979, where are they? What are our inspectors doing as far as ensuring that these committees are set up and that people know their rights? It is the job of the people at these tables to ensure that these laws are covered and if we have people out there to police these laws, they should do their job.

Bill 208 will not make the committees more effective. They will still only have the power to make recommendations which an employer can ignore. By saying there are no funds available for that particular job, they are ignoring it. In anybody's eyes, they are still ignoring that power. A good illustration of this is we are just

now starting a program of asbestos removal at Canadian Pacific Forest Products after a long struggle—long after it became widespread knowledge that this substance is deadly.

It is also easy for employers to get around even the feeble authority and responsibility of the committees. For example, in our mill it was the practice to have a general committee, made up of workers and management personnel, performing workplace health and safety tours, instead of the joint occupational health and safety committee with representatives who have been chosen by the members on the floor. Instead they had a general committee doing these tours. That has since changed, but it tended to reduce the joint committee's knowledge or influence over health and safety matters. This kind of split responsibility should be forbidden. There should be only one body responsible for health and safety in the workplace.

Concerning the certified member, the only significant change in the health and safety law by Bill 208 is the addition of the certified member who can stop work in dangerous situations in which the law or a regulation is being violated. While this is a good idea, it is watered down so much as to be practically meaningless.

First of all, what good is a right if it can be taken away on the spot? In the case of a stop-work order by a worker certified member, the management certified member can restart it immediately. Bill 208 does not even call for an investigation before this can happen.

What are the implications of this? Can a management certified member start work which has been stopped, even if a regulation is being violated? Or can the management certified member start work again because, even if a regulation is being violated, he decides the situation is not dangerous or there is not an imminent danger? We believe the potential for abuse of this management power is too great. Unless both worker and management certified member agree, work should not be started until a ministry inspector has investigated the situation and made a ruling.

Our experience is that management does abuse its power. We have had obvious reprisals against our members who were only exercising their rights under the act. Of course, we were able to get their jobs back through the grievance procedure, but just think of the true situation in nonunion plants, and I told you about one of them, where the only protection against such reprisals is a distant labour relations board.

The other major problem with this part of the law is that all the responsibility for making important decisions about the danger of work will be put on one worker, in most cases. This is unfair and inefficient. In a large mill, with several different types of operations, it is asking too much to expect one person to be as knowledgeable as the certified member should be.

For example, I myself do not know the Operating Engineers Act so I would not be effective as a certified member investigating a complaint from the steam plant. A different local, a different safety steward should also be certified. Similarly, much of the chemical operation would be a mystery to me, whereas to someone who worked in these places every day, violations of the regulations and dangerous situations would be easy to spot.

Our Local 105 fought to have a member, that is, myself, as a safety steward, plus because of the operation, a member from the chemical plant, a member of Local 105, also to be represented on a joint health and safety committee. In a separate incident, the woodlands, because of the machinery and the size of the operation, are also represented on the joint health and safety committee in the woodlands operation. The company agreed this was needed and therefore let us have an extra member on the committee for that reason.

We believe that the entire joint committee should be trained and certified. At the very least, there should be one certified member for every separate operation in a plant, mill or shop. The cost of the training is very small compared with the benefit of having more highly trained employees who understand the law and the hazards of the workplace.

Our company, with a general committee, used that same philosophy. Instead of training the whole joint committee as certified members, they used that philosophy of spreading it through the whole workplace to get more people trained. We have used that philosophy as far as the certified member goes. The more you have, the better the idea of safety can get around the workplace.

When Bill 208 was first introduced, we were pleased that our right to refuse unsafe work activities was finally spelled out. Under the present act, we always had that right, but it was a matter of interpretation which was missed by most workers, even those with interest in the law.

Now we learn the new Minister of Labour wants to take away the right we had all along, by

limiting the right to refuse unsafe work activities to situations where workers are in imminent danger. In other words, the law will now require us to work at jobs which we have reasonable grounds to believe will eventually cripple us, just because they will not cripple us right away.

How can this be called a law to protect health and safety? Repetitive strain injuries are a major part of the crisis in occupational health and safety in Ontario today. The government's response to this is to ignore the problem and even deny it is a problem by excluding from the law a potential remedy for it.

The right to refuse work is seldom used by workers. But there have been occasions when it was very useful in bringing a serious problem to the management's attention when it had previously ignored recommendations from the committee. Now the government is sending a signal that it will relieve employers of the responsibility for poorly designed work processes by removing the right to refuse whole classes of work which are clearly statistically unsafe.

1020

We found, in our tripartite committee—we had Mr Ham from the Royal Commission on the Health and Safety of Workers in Mines there and he was also surprised that out of 63 pulp and paper mills there was a total of 13 work refusals in 1988. Approximately 10 of those 13 had to do with one particular project, and that was concerning a paper roll. It turned out that those 10 refusals were all right and those workers were reprimanded for refusing to work—10 of the 13—so that left three actual work refusals. One had to be handled by the Ministry of Labour. That is our abuse and that is how workers abuse their rights. Sometimes they do not use them enough.

We cannot object strongly enough to this very backward step. We must demand that you restore our right to protect ourselves against the ignorance or greed of people who design work and tools that will injure us over time.

Mandatory testing of chemicals: We are very disturbed that there is no mandatory testing of chemicals introduced into our workplaces. You probably cannot appreciate how many chemicals were used to bring you the paper you push around all day. There are very hazardous bleaches and acids everywhere in our mills as well as many other chemicals, especially dyes, which may be hazardous. We do not really know because no one does.

If you look at a material safety data sheet, what is the chronic effect? It is not listed. That is bull.

If it is not listed it should not be on the work floor.

We resent being used as guinea pigs and we do not understand why the government is so willing to let that happen. If asbestos were being introduced into our workplaces today, under Bill 208 it would not have to be tested as long as it had already been in use somewhere else in the world. This is a totally unacceptable standard of health and safety for Ontario. We would like to hear the arguments to the contrary. How could anyone say: "We don't see the need to test chemicals first. After all, if they use it in Botswana and Singapore, it must be safe"? There must be mandatory testing of all chemicals we must work with before they are brought into our workplaces.

It is really too bad that when they had an opportunity to bring that in through the workplace hazardous materials information system they did not. Possibly with Bill 208 that possibility still may be there.

An overall concern with Bill 208 is that it does nothing to improve the enforcement of the law. The higher maximum fine for employers is only window-dressing. They can still violate the law and get away with it. The best example is reprisals against workers who use their right to refuse. In all cases that we have dealt with, the employer only had to pay the worker what he should have been paid all along. There was no penalty for breaking the law. There is also no penalty for violating other parts of the law.

For example, what happens to an employer if it is discovered that he withheld information about health and safety from the committee or a health and safety representative? In our experience, this happens all the time. In one particular case we were told for years by an employer that there was no dioxin in the effluent from the mill, and we have people working on there all summer long—actually, pretty well from winter breakup to when it freezes up. Only recently we were told that a new process has reduced the dioxins in the effluent to an undetectable level, which means we were lied to previously. What is the penalty for this?

It is not surprising that employers should want to withhold information about potential hazards that may cost them money to correct. Therefore, the law should have a built-in disincentive to do this. If it is found that employers have not given information that they should have given to committees and representatives, they should be fined. The size of the fine should be related to the seriousness of the hazard that was withheld.

I have seen recently, in a pulp and paper mill in Thunder Bay, how they look at the seriousness of

a situation where a person was killed. Three charges that they were charged with stuck. The total fine was \$9,000. That is on a person's life. The maximum fine at that time was only \$50,000. What is the purpose of a maximum fine of \$500,000 when we probably will not even get up to the \$50,000 mark?

By the way, I think the fine for the person who brought illegal liquor over in Manitoba was \$10,000, so for avoiding paying taxes it cost him more than the cost of a human life.

We know that this is the last day of your committee's public hearings into Bill 208. We also know that you have heard everywhere in Ontario, especially from unions, about the serious inadequacies of Bill 208. Some of you who may be more sympathetic to employers may think that unions are simply a special interest group. We readily admit this. Our interest group has been struggling for decades to reduce the number of victims of unsafe workplaces. We represent the special interests of workers who want to keep on living and who would like to enjoy a retirement without being permanently disabled by their work. We also represent the interests of their families and communities, as well as the health care system that must tend the victims.

We are proud to be such a special interest group, but we are discouraged by our lack of progress, due to the government's unwillingness to listen to us. You as the government have the power of life and death over workers. Just because you cannot identify the next worker who will be killed as a result of your inadequate laws does not make you any better than a government that executes specific individuals convicted of crimes. Thousands of workers have received capital punishment over the last 10 years for the crime of having to work for a living. As a special interest group, we will continue to press you to put an end to this uncivilized and inhuman waste of life. Please listen to us. Please save our lives.

The Chair: We have a little over five minutes left so I would encourage you to be very brief.

Mr Mackenzie: I just have a couple of questions. We had some 290-odd deaths last year not counting hazardous substances, which could add considerably to that. We had several hundred thousand WCB claims and tens of thousands of injuries, many of them disabling, in your industry. We have also had major companies telling us that we cannot afford to give the additional right of workers to make the internal responsibility system work. I want to know if any or many of those worker deaths that came out of

your industry—or the tens of thousands of injuries—were of owners or managers of the operations or were Canadian Manufacturers' Association or chamber of commerce types. In other words, the workers who were injured and killed, were they in any cases the owners or the managers of the operations?

Mr Chasoway: In one case, there was one management person who was killed and he was performing a bargaining unit job.

Mr Mackenzie: Was there a labour dispute or something on at the time?

Mr Chasoway: No, there was not. It was just something he did.

Mr Mackenzie: Can you tell me whether or not you think management personnel—and I am referring now to testimony we had yesterday by Graham Ross of Inco before this committee, who admitted that in their operation he had developed enough trust for the workers that they were allowing the right to refuse. That was no longer in dispute. But he was making a very strong case to this committee that that right should not be expanded to the workers in industry generally. Can you give any credibility to somebody who says, "Hey, it's okay in my plant, which is a big plant, but you shouldn't do it for anybody else in any other plant"?

Mr Chasoway: It is hard to do that. It should be a recognized thing by the Ministry of Labour.

Mr Campbell: Just to clarify, I was trying to follow your text on page 4 when you mentioned the selection of the certified member and you had said that he was not selected by the worker on the floor. I believe that is what my notes say. Could you clarify that for me, please? You may have made it as part of your verbal presentation. I am not sure. I was trying to write and follow it at the same time.

1030

Mr Chasoway: That section was part of my verbal, yes. That was referring to two committees. On one committee, the joint health and safety committee, which is recognized as a legal committee, the representatives on that committee are picked by the members of the union. They are the ones who at one time were not doing the tours, investigations, etc. Now, in our plant, they are.

But with the confusion of the two committees, if that is allowed to happen, workers sometimes do not send their concerns the proper way. It is like anything: It should be clear what the purpose of the joint health and safety committee is and there should be nothing in there that distorts that.

Workers should be made aware that, "This is the committee, this is your representative and that is whom you approach."

Mr Campbell: It does not seem to be clear that there was a selection by the worker. I think you had mentioned that. I could not find it and I was not sure if that was the case, but there is provision in the act for a selection by the worker.

The second part that I am dealing with is the operating engineers and other acts that would be relevant to parts of your workplace that you may or may not be operating in directly. I just wanted you to clarify that. If you were out in the bush, for example, dealing with one issue and you have a certified worker there, what relationship would that have to the mill, this steam plant area that you were referring to in your brief here?

Mr Chasoway: You are talking about a whole different act there. What we said is that we have representatives, and because of the complexity of a pulp and paper mill and because of the different unions, they have different representatives. The representation from Local 865 would be a lot more capable of doing that job.

What I was referring to there was that if in the case that one certified member from each side is chosen from that committee and let's say for example that he is chosen, he is representing 45 people and out of that he is a certified member for the 650 to 700 members whom I represent. He does not know anything about the rest of the mill and the hazards that are in the rest of the mill. The same with me: I do not know the Operating Engineers Act and what all the responsibilities of the people in the steam plant are.

Mr Campbell: It is the same union but with different locals in the same plant; is that what you are saying to me?

Mr Chasoway: With the unions, the CP Forest Products unions and their locals have their reps and this would be with the operating engineers union, in this case.

Mr Campbell: So you are saying that you would not be comparing notes in different areas or discussing different parts with different unions, would not be getting together and working out those kinds of things for an overall safety policy.

Mr Chasoway: We get together for an overall safety policy, but some things cannot be held off until you can get a committee together once a month. Some things need action by a member right away. I am saying that if a certified member can react or investigate a worker's concern

immediately, it would be a lot more advantageous if the whole committee was certified.

Mr Hampton: You mentioned that there have been four fatalities in the past three years alone in the pulp and paper industry in northwestern Ontario.

Mr Chasoway: In the Dryden mill.

Mr Hampton: Do you know how many in northwestern Ontario?

Mr Chasoway: I do not know the exact figure, no.

Mr Hampton: I know there was an incident in the woodlands division, in the garage, a couple of years ago where a worker died, I guess, overnight. I wonder if you could just tell us about what happened in that incident.

Mr Chasoway: Rick Besselt was working with heavy machinery and he had to go through a port to check out the hydraulics and adjust it. From what I understand—because it was previous to my actual involvement with the safety committee—through the minutes and that, for a couple of years they had been arguing that in a case where they have to work on this machinery and the hazards they put themselves in there should be an operator there, too, in case something goes wrong.

Since nothing had happened in the past to substantiate this or give a lot of credibility to it, the company did not want to put two people in when they were performing these tasks in the tractor shop or truck shop. When Rick was working on it and he was in the machine adjusting this, he did not realize that it was creeping in the upward position. When he did realize it, it was too late. He was trapped in the manhole for the adjustment. There was no one around to assist him.

Mr Hampton: He was working alone?

Mr Chasoway: Yes.

Mr Hampton: What time of day was it?

Mr Chasoway: It was approximately 11 o'clock at night.

Mr Hampton: What happened?

Mr Chasoway: He died.

Mr Hampton: How?

Mr Chasoway: He was crushed.

Mr Hampton: While the machine slowly came down on him?

Mr Chasoway: Slowly came up.

Mr Hampton: Slowly came up on him. He slowly died.

Mr Chasoway: They say it was quick because from the time that the squeezing stopped to when it actually killed him was very quick. He was being squeezed for probably quite a while. By the time he actually died, it could have been quick. That was part of the comment made, but he knew about it for quite a while.

Mr Hampton: Did you raise this issue previous to this happening?

Mr Chasoway: Yes.

Mr Hampton: Why was nothing done about it?

Mr Chasoway: Since there had not been anything that happened in the past to substantiate a need for it, they would not back it up.

Mr Hampton: Do people still work alone at night in the garage in this kind of work?

Mr Chasoway: We did establish that two members have to work there now. At the start, the company was playing with it a lot and not scheduling two people, but every time it was caught at it, it would put the second person in. Mark was involved earlier than I was in that case and I can let him expand on it a bit if you want.

The Chair: Make this the final comment because we are out of time.

Mr Weare: In brother Besselt's death, it must be understood that there was an accident that took place about 11 months before that where a fellow had fallen and broken a collar-bone and he had lain there for quite some time trying to get help.

Mr Hampton: Was he working alone?

Mr Weare: He was working alone. That was one of the earlier incidents. At that time when we argued, and we had been arguing previous to that as well, the company stated that security comes through there and these guys would be given hand radios. They had all sorts of good reasons but it boiled down to the fact that they did not want to put two people on shift. It was as simple as that, which was economics, nothing more. We feel very sure that had a second person been there Mr Besselt's death would not have occurred.

As well, we had argued with the company previous to that in trying to come up with some type of schedule that would not increase the number of people needed. We had offered them several schedules to that effect. All of them were turned down. The last recommendation from the jury in the inquest was that the company sit down with the union and negotiate a schedule that allowed for two people, which we did. It is awfully sad that it had to come after somebody's death, because it was all there before he died.

The Chair: I wish we had more time for an exchange because it has been a very compelling presentation that you and your colleagues have made. We thank you very much for coming before the committee.

The next presentation is from the United Food and Commercial Workers. Is Mr Killham here? He is not here.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL 490

Mr Strain: My name is Craig Strain. I am health and safety committee representative for the International Association of Machinists and Aerospace Workers, Local Lodge 490, Kenora, Ontario. I am employed by Boise Cascade Canada. They run a pulp and paper mill in Kenora and Fort Frances.

On behalf of the International Association of Machinists and Aerospace Workers, Local Lodge 490, I would like to thank the standing committee on resources development for this opportunity to speak on concerns about Bill 208.

As a representative member for the machinists on the joint health and safety committee, I have seen many circumstances that have led to serious or even fatal circumstances.

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The rate of serious accidents in the pulp and paper industry is on the rise, in fact, to the point that the government formed a tripartite committee to investigate health and safety within most Ontario pulp and paper industries. The final results of this committee, to my knowledge, have not as yet been released. I think the Ministry of Labour's setting up of such a committee is self-explanatory. It shows a definite need for investigation into what is happening in the pulp and paper industry in regard to health and safety. It is too bad that deaths and serious accidents had to happen to make this investigation possible.

As a worker rep on a committee which represents over 600 workers, I find it frustrating that I have little or no power in the implementation of health and safety policy and training. All I can do is advise and try to convince the company, Boise Cascade Canada, but it has the ultimate power under Bill 70 to decide what will happen.

Pressure has been put on Boise Cascade Canada to the point that an order was written by the Ministry of Labour to train workers on certain company-implemented safety policies. These policies were discussed but never agreed to in full by the worker health and safety representatives

on the committee and since that time have had to be revised.

I guess the bottom line is that workers have more of a concern towards safety in the workplace because we are doing the work or being exposed to the hazards. I do not say it to be derogatory towards supervisors or managers; it is just a fact. Most injuries and deaths occur to the worker. It is for this reason that worker health and safety committee people deserve more of the responsibility to the worker whom they represent. We are elected and/or appointed by the workers to represent them because of our interest in and commitment to health and safety.

The workers whom I represent come to me for advice on health and safety situations knowing that I will act in their best interests. I also offer advice when I see situations that may be dangerous to a worker's health and safety. I feel the workers trust me to make decisions on health and safety more than they trust management. Why? Because they work with me.

In conclusion, I would like to state the opinions of the workers whom I represent, and they are my opinions too.

1. A trained health and safety representative has to have the legal right to shut down a piece of equipment that he or she deems unsafe to operate. As a health and safety person I cannot see a trained representative of workers taking advantage of that right. That person's credibility is at stake.

2. If a worker has refused a job assignment because of a health and safety reason, that refusal should be resolved before someone else is assigned the same task.

3. The employer has an obligation to train workers under the law in any and all hazards that may exist. If they do not live up to that obligation, they should be charged and prosecuted to the fullest extent of the law.

In conclusion, politicians have a chance to make a positive change in Ontario's history by showing genuine concern and granting workers the right to fully protect themselves in the workplace. Nothing less will do.

The Chair: Nick Chasoway talked about this tripartite committee as well and you mentioned it in your brief. Can you tell us a little bit about that? I am not sure how that functions.

Mr Strain: I can only go by the information I have been given. The tripartite committee, I understand, was formed because of a need due to an increase in the pulp and paper industry accident level, serious injuries. I guess the main one was the increase in deaths in the pulp and

paper industry. It was formed with representation through the Ministry of Labour, union representation—the brother here, I understand, is one of the people who were on the committee—and pulp and paper managers in the industry.

The Chair: Do they make recommendations to the government representation on the committee for changes or do they deal strictly with specific changes in workplace situations?

Mr Strain: As yet the report has not come back, but what they did do was conduct surveys in workplaces by talking to company and worker representatives on health and safety committees.

The Chair: Maybe I will get a chance to talk to Nick later, because that is an interesting thing.

Mr Mackenzie: I have the same question I was asking the previous witnesses. We had some 290 deaths last year. We have 1,820 workers who were injured every single working day in the province of Ontario. We have an internal responsibility system that most of the people have told us is not working, including the government's own studies. The survey carried out by the Minister of Labour's own advisory council found that 78 per cent of our workplaces are in violation of the act or the regulation. The companies, the chamber and the manufacturers have been arguing before this committee that the equal right or the unilateral right of a worker to shut down an operation should not be there.

I am wondering whether you find that acceptable in view of the fact that under the current system, where the workers do not have the equal right, it is the workers who are getting killed and injured, and whether you can tell us how many management people in your operation were among the literally thousands of injured and dead workers in the province.

Mr Strain: I would have to say, to the best of my knowledge, none of the serious injuries which have occurred at my workplace have been supervisory or management people. They have all been workers on the shop floor.

Mr Mackenzie: Do you think it is reasonable then that workers should, under legislation in the province of Ontario, have at least an equal right and responsibility for health and safety on the job and decisions that have to be taken on the job, given the fact that they are the ones who are paying the price?

Mr Strain: I think it is a definite yes because, as I tried to state in the brief, we are the ones who are on the shop floor; we are the ones who are exposed to the hazards. I think by being exposed to the hazards and the things that happen in the

workplace we are more aware. I can spot things a lot more quickly than a supervisor will. In fact, a lot of the concerns that are brought to management are brought by the health and safety representatives.

Mr Mackenzie: Do you find it strange that Graham Ross of Inco would argue before this committee, as he did yesterday, that while he had reached a position where he trusted his workers and they would have that authority, it should not be extended to other industries or other companies in Ontario?

Mr Strain: I guess the first statement I would make is that I do not know how a person could intelligently come to that kind of conclusion about other industries that he is not involved with.

Mr Mackenzie: We had a presentation before this committee—I seem to have mislaid it at the moment—by Ontario Hydro in Toronto just last week which stated very clearly that its original position had been the same as industry generally, but it was reassessing its position with respect to Bill 208. They had reached the conclusion that people had better be aware that things were changing around the world and that in effect, when negotiating an agreement, which I understand they have now, that virtually concedes, maybe even surpasses what is in Bill 208 without the amendments that are suggested. They also said that the internal responsibility system had to work and had to be based on an equal measure of trust and responsibility.

Do you think that approach would probably bring about co-operation of a kind we have not seen before between labour and management if that were the position of industry generally in this country?

Mr Strain: Right now this government has a chance to give workers that right. I think it is a right that workers deserve, and I guess if it is not given to the workers through the legislative process, workers will have to bring it to the bargaining table. I think if that does happen, you are going to see probably more injuries occurring in the meantime. There have been enough deaths. I think it is time to put it to an end.

Mr Mackenzie: Do you think that workers in your particular operation, your plant, your local, would abuse the right when it comes to health and safety if they had an equal right with management?

Mr Strain: Definitely not. As a worker health and safety representative, I have been involved in situations where I have had to meet with

management and discuss unsafe acts. I think only once have I ever called the ministry in because their response was inadequate.

1050

Mr Riddell: I am a little confused. On page 2 you say, "A trained health and safety committee representative has to have the legal right to shut down a piece of equipment that he/she deems unsafe to operate," but then you go on to say, "As a health and safety person, I cannot see a trained representative of workers taking advantage of that right." Are you suggesting that the trained representative of workers would not necessarily be a member on a health and safety committee? What do you mean by this?

Mr Strain: Okay. Just to clarify, I guess it is not spelled out as clearly as I would have liked. I do not think all worker representatives are members of the committee, otherwise the committee would probably have darned near every member in the workplace on the committee. But there are stewards who are out in the workplace who are familiar with certain jobs in certain areas. For example, in the pulp and paper industry, like the brothers and sister who presented before me have stated, there are so many different tasks and duties that one particular individual, like a committee person, just could not be that person who could shut down, look at or have the capability of shutting down every particular operation. Does that clear it up?

Mr Riddell: So you think there should be more than one certified worker representative who would have that right to stop work.

Mr Strain: I think, depending on the size of the workplace, definitely. In the workplace where I am, where there are over 600 workers, I do not feel that one person could be qualified to make that assessment in every particular circumstance.

Mr Riddell: If the right to refuse were more workable in the existing act, in other words, if the existing act prevented an employer from putting somebody into a workplace that a previous worker had refused to work in and if it were an offence to intimidate an employee to refuse work, in other words, if that part of the existing bill were tightened up, do you think that we would still need a person who can stop the work at the plant?

Mr Strain: I think you definitely need that. You need people, workers' representatives, who have to have that right. I think nothing less will do.

Mr Riddell: If I am working at a place that I consider to be dangerous and I refuse to work and know that I have the protection of the law, that I cannot be intimidated or the employer is going to be penalized in some way and that the employer cannot put somebody else into that position until it has been rectified, why would that not suffice rather than having to have somebody shut down the plant?

Mr Strain: Unfortunately I do not think that all workers in any workplace are equally trained or qualified as far as the act in health and safety. I think that certain workers are more knowledgeable of the law, certain workers are more capable of making a good decision when it comes to a particular unsafe condition.

Many times a worker on a shop floor may not even realize that there is a hazard there, that that hazard exists. He might not notice it. The next person who comes on to the job may say, "Hey, jeez, there is a hazard here." As workers, we all do not see things in the same way as far as hazards go. There is not one worker who is ever killed in the workplace who realized he was going to be killed before the accident occurred.

Mr Riddell: What if that certified worker were used as a person to offer a second opinion? I am a little timid and I feel that I am working in an area that is dangerous to my health and safety but I am not just too sure that I want to refuse to do the work, so I call on a certified rep who comes around and he will say: "By all means, you have every right to refuse. Don't do the work." Now I know that nobody can be put into my place until it is rectified and I know that neither I nor the certified worker is going to be intimidated by the employer. Would that suffice or do you still think that there needs to be somebody coming along and shut the whole bloody program down?

Mr Strain: I guess you are going from one side of the coin right to the other side of the coin. I do not think that you are even going to see a worker health and safety representative who has that right to come in and shut a piece of equipment down unjustifiably. As a person who is a health and safety committee person and represents workers, my credibility is at stake if I am going to go around shutting operations down all over the plant all the time. Do you think I am going to have the respect of workers if it is not a justifiable case? Am I going to have respect? How long am I going to be able to go around doing that before even the workers are going to say, "Who is this guy?"

Mr Riddell: No, I am not disputing the abuse, because I think there has been enough evidence

before this committee to suggest that there is no worker abuse, or very little.

I am not suggesting that there would be, but I guess the thing that concerns me, and I suppose it is something we have to take into consideration, is, when you have management and chambers of commerce and all the rest that appear before the committee and say, "You know, investors in business in this province are getting pretty sceptical about establishing business because of everything that is put in their way"—not just this bill here but the many other programs that governments have introduced that business feels is a bit of an obstacle, and then they take a look at this bill and say, "My God, a worker can come along and shut the whole place down"—in other words, the car manufacturers will say, "A worker can shut the place down and if it is down for an hour, that means that there are 100 cars that are not going to come off the line to meet the consumers' demands," and everything else there—we have to listen to it all and I guess we have to weigh it all very carefully.

But I guess my concern is that there are enough businesses leaving because of the free trade agreement, and the last thing we want is more businesses deciding to leave, or we do not want to take away the interest of somebody who wants to establish business. I am saying that somehow we have got to be able to come up with something that protects the workers but still invites that guy who is prepared to invest in this province.

Mr Strain: I think that if this legislation comes across, gives workers certain rights and saves one life, then it is worth it. In the workplaces where I have worked there has been needless injury and needless suffering by workers. I appreciate what you are saying about business and everything else, but I think even now companies realize that if they are businesses that have lots of accidents and deaths occurring in their workplaces, it is costing them money, and you would think the companies would have the same interest that the workers do to stop the injuries.

I think that most workplaces would not have a problem with a worker representative having a certain amount of power in the workplace to prevent those injuries or accidents from happening. The company should have a vested interest in the health and safety of its employees. I think that part of that is what the legislation was originally suggesting, that workers have certain rights in the workplace to shut down unsafe work.

Mr Riddell: Thank you, Mr Strain.

Mr Hampton: Craig, Boise Cascade has a plant in Kenora and a plant in Fort Frances, correct?

Mr Strain: Yes.

Mr Hampton: I am aware of at least one union in Fort Frances that has withdrawn from the joint health and safety committee that exists now because it considers it a sham. Are you aware of that?

Mr Strain: Yes.

Mr Hampton: Can you give me some information on how that has come to pass?

Mr Strain: The union that withdrew from it is our sister local in Fort Frances, its reasons being that it felt that the company was stacking the committee to best serve the company interests. They felt that the company did not have a genuine concern for the health and safety of the workers, that they were trying to use the committee to implement policies and try to get the sanctioning of the worker on the committee to put in policies that they did not agree with.

Mr Hampton: Okay. I understand from your brief that the Ministry of Labour had to actually bring a specific order against Boise Cascade to get it to recognize its responsibilities in terms of health and safety.

Mr Strain: Yes.

Mr Hampton: Under the existing law a worker has the right to refuse work. Yet, even though a worker has the right to refuse work we have got this kind of situation in a mill where the union is withdrawing from the committee and where a specific order had to be brought in. How effective is the right to refuse if that is the kind of stuff that is going on?

Mr Strain: I cannot speak much for what has happened in Fort Frances outside of what I have just said. In Kenora our health and safety committee with Boise Cascade works better, I have to say, in the fact that all unions within the Kenora operation participate in the health and safety committee. As I mention in the brief, the frustration that I find is that we have little to no input into some of the policies that the company comes across with, but the committee works effectively in my opinion in that at least we have the ability to attempt to influence certain unsafe conditions in the plant. Am I answering your question?

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Mr Dietsch: Not exactly the way he wanted it.

Mr Hampton: I want to ask you something else, Craig. Part of the problem you deal with in your brief is that the Ministry of Labour has had to require the company to train people on its safety policy.

Mr Strain: Yes.

Mr Hampton: So how effective is the right to refuse if the Ministry of Labour then has to come along again and bring a specific order saying, "You must train people in these policies"? How effective is our health and safety regime if, after it is in place, the government then has to come along and say: "You must train people in these policies. You have to train them to understand what you are trying to do here"?

Mr Strain: In the particular instance, I guess maybe it shows the point that I was trying to make. The Ministry of Labour wrote an order against Boise Cascade that had to do with training, the reason being that a worker was in a situation where he darned near was locked in a confined vessel. Boise's reaction was to discipline the worker. But after the Ministry of Labour became involved, it determined that there was a genuine lack of training of the workers in how these policies should work and how the workers should work in a safe fashion. Therefore, they wrote an order which probably cost the company in the neighbourhood of \$100,000 to train its employees. Since that time I do not think they have had any occurrences that have been as close as that occurrence of someone getting locked in a vessel.

Mr Dietsch: You mentioned that you had to call in the Ministry of Labour once, I believe you said, on an issue about the right to refuse work. How many opportunities or how many times have you dealt with that right to refuse? How many have you been able to settle?

Mr Strain: I did not say that we had called the Ministry of Labour in over our right to refuse. It was due to a genuine lack of training in company policies.

Mr Dietsch: So it was over the training of staff.

Mr Strain: Over the training that they came in to investigate, yes.

Mr Dietsch: Have you dealt with any individual right-to-refuse situations in your workplace?

Mr Strain: Off the top of my head right now, personally I cannot think of a particular instance where I have had to deal with a person's right to refuse. I know it has occurred and other health and safety committee people have dealt with them, but not I myself.

Mr Dietsch: On your work site it has occurred, but you have not had to deal with it.

Mr Strain: Yes.

Mr Dietsch: How long have you been involved with the committee?

Mr Strain: With the health and safety committee? Two years.

Mr Dietsch: On page 2 of your brief, issue 2, you talk about a worker who has refused a job assignment because he feels that it is infringing on his own particular health and safety and the company reassigns or is wanting to reassign a worker to do the same task. How many times does that happen with you?

Mr Strain: In the workplace, once again, I have not had to deal with it personally, but I know that it has happened probably in the last couple of years maybe three times.

Mr Dietsch: In your opinion, from your experience I guess in dealing on your particular work site with individuals—there have been a number of presenters before the committee over a long range of time, as you can appreciate, some of whom, from both unions and management, have indicated that they feel there should be some type of joint conference or joint co-operation in terms of a worker safety rep and a management safety rep being present in the cases where the company is asking another worker to go on to a job that a worker has refused because he, individually, thinks it is unsafe.

Do you feel that would satisfy some aspect to get over this hurdle some unions have presented before us, indicating that the company just goes and gets somebody else, whether he does not speak English well enough or whether he just does not comprehend those individuals? Their concern basically was that there should be a mechanism whereby the individual has his representative present at the time so that he can inform him or make sure that he is informed of the reasons why the other individual refused, etc. What is your opinion on that?

Mr Strain: I have to come right back to what I originally said. I think once a worker has refused a task, until a full investigation has taken place and the hazard that worker has brought forward has been looked after, to assign someone else to the job could be deadly. I understand there has been an instance in the last year where that exact thing happened, where the company assigned someone else to do the job, and the person was electrocuted. I just do not know if that one death was worth it.

Mr Dietsch: There are obviously disputes in the workplace from time to time over whether the job is safe or unsafe, and there are always differences of opinion between workers in fact as to whether it is safe or unsafe. I guess that is the aspect that these presenters felt, that if it were, at least before anyone else could be assigned to a particular job, the workers and the management would be currently right there on the site.

Mr Strain: I think what you are saying is that they would discuss the matter, but management would have the unilateral right to just say, "Okay, we have talked about it, but I am telling that guy to go on that job." That person could go on that job and could be injured or killed or maimed, and who takes the responsibility for it?

Mr Dietsch: Or not killed or maimed or injured.

Mr Strain: But if it happens once, is it worth it? That is all I am saying.

Mr Dietsch: Okay. In your opinion then, in the way you have handled these sorts of things, management has from time to time in its presentations said that workers have abused the right to refuse or have abused their privilege in terms of their individual right to refuse. I am thinking of General Motors and Chrysler and some of the bigger companies. What do you feel? Do you feel they have legitimate concerns in that respect or not?

Mr Strain: I can only speak for the workplace which I work at and I cannot think of one instance where any worker health and safety representative or person has refused to do a job assignment for health and safety reasons that have not been justified. I cannot see where a company can honestly come forward and say that people will take advantage of that particular portion of the law. I just cannot believe people would do that, myself.

The Chair: Thank you. I wish we had more time, but we are over time, as a matter of fact. Mr Strain, for the committee, thank you very much.

Mr Mackenzie: Mr Chairman, on a point of privilege and, I think, the privilege of this committee as well: This committee has made a point of making it clear that witnesses are before this committee at the request of this committee to deal with probably one of the most serious pieces of legislation, health and safety, that has come before us in Ontario in some time. I would like this committee—I am not sure of the procedures—to ask the minister for an answer to rather serious allegations that have now been made.

I just finished talking on the phone to Bob DeMatteo, who is the health and safety director for OPSEU. We all know that government employees in many cases are excluded from the legislation. This government is trying to exclude many of its own employees. We had before us just the other day two young inspectors from the Ministry of Labour, the health and safety inspection branch. I am told that Ken Armstrong, one of those inspectors, has been contacted by his manager and has been told that a special investigator has been assigned by Walter Melinyshyn, the safety and health director, and who has asked who authorized his attendance, has questioned comments and statements he made before this committee and has conducted a general harassment of this employee since he appeared before this committee.

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I am further informed that another Ministry of Transportation employee, who appeared before us in Sault Ste Marie, has been questioned about his comments and activities in appearing before this committee by his supervisory staff, had a scholarship granted to the Ontario Workers Health Centre, and has been turned down flat for that scholarship, the reason given being that they needed him for snowplow driving, which is not part of his job in the Sault area.

If there is any verification of these allegations, then we have a serious problem in terms of management intimidation of people before this committee, and I think there should be an answer from the minister before we have any statement or anything else tomorrow as to just exactly what is going on in terms of the health and safety inspectors and the other Ministry of Transportation witness who appeared before this committee in the Sault.

The Chair: Thank you, Mr Mackenzie. Those are indeed worrisome allegations, and it is the first I have heard of them, certainly. I would expect that people here from the minister's staff will be in touch with the minister, I would hope shortly, and that we can expect a statement from the minister tomorrow when he appears before the committee.

Mr Mackenzie: I think it is absolutely imperative that there is an answer for this type of management harassment of employees.

The Chair: As I say, that really is worrisome.

Mr Wiseman: I just wondered too, as one of those employees was a Ministry of Transportation employee, whether perhaps we could have a letter from the Minister of Transportation as to

why he was one of the ones who was ordered back and not given his tenure on that. We should have it clarified by that minister as well as the Minister of Labour.

The Chair: Okay. I think that it would be nice to have the entire matter—

Mr Dietsch: We should have the facts first.

The Chair:—aired before the committee tomorrow afternoon. So we would ask that the Minister of Labour do that, and I also would hope that the Minister of Labour could be in touch with the Minister of Transportation so that we could clear up both matters before the committee tomorrow.

Mr Mackenzie: I want to make it very clear that we do need—I agree for once with my colleague Mr Dietsch—the facts. But we do need the facts, and we have not always been getting them before this committee.

The Chair: I agree that that is exactly what we need.

Mr Dietsch: I would not go that far, Mr Mackenzie.

The Chair: Can we leave it at that then, that we will ask the Ministry of Labour people who are present here today to be in touch with the minister so that tomorrow we can have a statement from the minister at two o'clock? Okay?

Mr Dietsch: We will not have a reprint of Hansard so quickly, but I would appreciate it if Mr Mackenzie would write down his request.

The Chair: He could at least have a talk with the Ministry of Labour people who are here and they can look after that.

Mr Mackenzie: I think I am on the record officially, and it can be repeated in the information we have.

The Chair: Thank you for bringing that to the attention of the committee.

UNITED STEELWORKERS OF AMERICA

The Chair: The next presentation is from the United Steelworkers of America. Mr Sheppard is here and Mr Murphy.

Mr Sheppard: Bear with us, Mr Chairman, while we mount our pictures.

The Chair: Gentlemen, we welcome you to the committee. We certainly know Mr Sheppard from previous appearances. If you would introduce your colleague to other members of the committee, we can proceed.

Mr Sheppard: Thank you very much. My name is Moses Sheppard. I am a staff representa-

tive with the Steelworkers in Thunder Bay. To my right is Francis Bell, president of union Local 8126 at MacIsaac-Inco, Shebandowan. Francis is also a worker representative. You will note he only has one head and looks just like the rest of us.

Our presentation today is made on behalf of the miners who we represent in the northwestern sector: Local 950 at Balmertown, Local 7879 at Ignace, Local 8126 at Shebandowan, Local 9165 at Marathon, and the newly organized employees of Dona Lake Mine at Pickle Lake. That group that we have just indicated represents approximately 1,000 of our members, and they are employed in mines, underground and in the mills and plants that process the ore.

All of you will know, or at least you ought to know, that mining continues to be one of the most hazardous occupations in this jurisdiction. Some of you will also know that this union, and personally I have been involved for nearly 20 years, has been making representations respecting health and safety to committees not unlike this one. What we tell you today we have told you many, many times in the past. Nothing has changed except the parade of people who come from Queen's Park to tell us what is good for us. Quite frankly, I am fed up. Our members are fed up with the whole bloody mess.

I am going to ask each of you as MPPs to reflect on your responsibility, because our members think you are redundant. Our members think you have outlived your usefulness. If you are here to do what the Premier has said, what the Minister of Labour has told you you ought to do, then you are wasting your time and you are wasting our time.

We think you have a responsibility to listen to what people are telling you. The stuff they tell you, they did not make that up. That is real, and it is old. We told it to Ham nearly 20 years ago. It has not changed. For the record, in 1989 in this neck of the woods we lost three miners. That is from accidents. Many more have died from industrial disease, which neither this committee nor the previous committee on compensation turned its attention to at all. So far this year, one miner has died.

We want to talk to you, because it was mentioned briefly in Thunder Bay yesterday, about this program called Workwell, a program where the compensation board will reward employers with good safety records and presumably will punish or penalize those who do not have good safety records. I want to tell you about

one of those places, a mine, that has had a Workwell assessment.

In 1988, this mine, with 350 hourly rated employees, had 487 reported accidents. Going back from April of last year, in each of the preceding 10 years it lost 150 to 180 pounds of mercury from the process and did not bother to tell anybody about it, and in the week in which the Workwell assessor was on the property doing the assessment, it had 15 reported accidents. They got 87 per cent on the Workwell assessment. You need 65 per cent to fail, and we cannot even contemplate what the hell this thing would have to look like to get 65 per cent. We believe that they would be shooting workers on the property. This is a bloody disgrace.

You will notice, as well, we gave you in a loose attachment a letter that the Minister of the Environment sent us. Do you know—because we addressed ourselves to the Minister of Labour and to the Ministry of the Environment—that there is no requirement to report such losses from processes in law, either through Labour or in Environment? More important, that ton of mercury that got lost is not considered a spill under the Environmental Protection Act. Nobody knows where this went.

When we talked to the company, it said: "Oh, but they all smoke. Do you know of anybody who has died with mercury poisoning?" We have things on this property even worse than mercury.

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This is the same group that appeared before you yesterday in Thunder Bay and said—the Mines Accident Prevention Association of Ontario said it, I did not—"...so that we can continue our efforts to make the Ontario mining industry among the healthiest and the safest in the world." I did not make that up; they said that. That is what they told you yesterday. Those pictures came out of mines. We did not make that up.

In any event, Workwell is a disgrace. It is meaningless. More importantly it is criminal to encourage a company with that kind of record to believe that it is doing well. Can you imagine, this company waited with bated breath to see how much it was going to get and was really thrilled when it got 87 per cent on its test.

We talked to you yesterday briefly about internal responsibility; we will do so again this morning. Those pictures we showed you yesterday were in aid of coming around to talking about IRS, because it really is a buzzword. We now have mining companies—I am in bargaining with a couple of them—saying, "We want to insert in the collective agreement clauses which say, 'If

employees go outside the realm of IRS, they should be disciplined.”

Nobody knows what it is yet. The mining health and safety branch has circulated a draft document, the only one I have seen. It lays out some parameters. We have said to the companies: “Do you know what it means, or has somebody already defined for you what it ought to look like?” They deny that.

The material you see here, and some of you yesterday commented that it was gross, that it was awful—Mr Bell, perhaps you would lift the one on the water tap at the bottom and circulate it? That meets the law of this province. That is okay in law. How do we know that? Because there are no bloody charges laid. The Minister of Labour has seen that thing. The Mining Legislative Review Committee has looked at it and there has not been one bloody charge. We have to assume that fits the law of this province.

Our toilets, the one without the cover: you see in the photo adjacent to it. The minute you put a door around that monstrosity it fits the law. It now satisfies the law of this province. Now, is that what you people contemplated when you put Bill 70 together? Is that what you had in mind? I am asking you that question. I would like to have an answer today before I go from each of you. Is that what you had in mind? Because that is what miners are living with. And there is the rest of it. You see the lunchrooms. Do we have a picture of a lunchroom, Mr Bell? Go in with a broom and tidy it up a bit and it fits the law of this province. I hear some of you talking about: “The law is too stringent already. We don’t want this.”

Let me tell you a bit about that photo with the tap on it. The environmental people who are responsible for doing water tests underground in one mine would go in, and before they would draw the water for the test, they would get a propane torch and heat up the area adjacent to the spigot. That was done on their own admission to make sure that there were no germs on the outside of the tap. We said to them, “But if you supply enough heat, clearly you will be doing something, changing the water internally.” They said, “Yes, but we certainly don’t want it contaminated by outside sources.” All documented, all on the record. Each and every one of you can check it if you wish, or not check it if you do not wish.

When we say IRS cannot work, that mine has been in operation for 40 years, declared a dividend every year, investors doing well, and you want us to sit down and parley with those people, those wonderful folks who bring us that? Is that what you are asking us to do? You are

going to abrogate your responsibility as legislators and tell us to go and work it out with those people? Give me a break.

Yesterday the Mines Accident Prevention Association of Ontario told you we were not participating in the association. I spoke to the director last night and I asked him, since MAPAO had put a letter to him on the record, what his response was. His response is as it always has been, “Give us proper representation, representation that is meaningful, because what they have done under the proposal that is now in front of us is upped our representation to four, but they have increased the committee generally.”

The last thing I want to remind you about this business here is that it was this industry, through MAPAO, through the Ontario Mining Association, which said that the excess lung cancers in gold miners were due to lifestyle. Lifestyle, they said, is what caused cancer. That is coming from the wonderful folks who deliver that to you.

Let me go on to another thing, accident reporting. The vice-chairman of the Workers’ Compensation Board—it is reported in the *Globe and Mail*—said he was surprised about the diminution of accidents in this province, or the reporting of them, by some six per cent in 1989 over 1988. You may know—I am sure you do—that the current mining account at the compensation board has about a \$60 million deficit. You and I both know how that got there. That is because we did not report accidents years ago, or many of the companies went out of business or the accidents were underreported. That is why that is there.

Let me give you two examples of what is happening today. A worker is injured at an area mine on 24 December 1989. He bruises his back and breaks his nose. He is taken to the local hospital, they X-ray him and they send him home. He returns to work the day after Boxing Day, and after he comes home that evening the hospital phones and says: “Please come along here. We want to admit you.” They admit him on the Wednesday evening, they break his nose and repair it. They release him on the Thursday. They put him in a taxi and send him to his home. When he gets to his home, there are two representatives of the mining company waiting.

They take him in their car, take him along to the mine site and he is now shown as having worked on the Friday. I think there were something like 27 stitches in his nose. They take him to the mine site. That record will show that there was one day’s lost time.

I have also inserted or given you a copy of a health and safety committee co-chairman report of an underground subcommittee. The man's name is Jim Tanner. You might want to read in the second to last paragraph what he has had to say. He says: "To say this company is using strong-arm tactics or intimidation to prevent workers from going on compensation might be a bit strong but there appears to be room for comment. When you look around and see employees being picked up by taxis for delivery to and from the bus depot, paid for by"—the mine—"as they are unable to get to work due to injuries, workers sleeping in the nurse's station because they are taking muscle relaxers and painkillers and cannot stay awake...or offers made to employees hospitalized from injuries that their wages will be paid to them just to keep the statistics from showing a lost-time injury."

That was reported to the company, to the joint committee. They did not make a comment—the same people you heard yesterday, the same representatives who told you yesterday everything is fine in mining.

The second one: A worker injures his back moving timber underground. He is provided muscle relaxers. That is the one Jim Tanner just talked about. He spends three weeks holed up in the nurse's station, is sent home at noon each day because he is sleeping half the time and there is no lost time, so the taxpayer in Ontario can expect to pick up the bill for that 10 or 15 years in.

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In conclusion, we said we are tired of all of this business because we suspect no one is listening anyway. At the risk of repeating myself, we said we told all of this to Dr Ham. The only thing that has changed is the hotel rooms. Some of your faces have changed. Some of you were around in the days of Dr Ham.

I want to talk a bit about this business of these terrorist workers that some of you are afraid of, those terrorists who are going to hijack these companies, put them out of business, do all sorts of irreparable damage. Three hundred and fifty of them live in Dickenson or live at Balmertown. We have had them living in Marathon, in Ignace. They are integral parts of that community.

They do really terrible things. They teach Boy Scouts and Girl Guides. They teach Sunday school. Some of them drive the ambulance, voluntarily, and the volunteer fire brigade. They belong to those things. The Moose and the Lions, they are involved in those clubs. They raise money; they give it out to people who are

desperately in need. Those are the terrorist employees some of you are terrified of. Very ordinary people, my friends, and not unlike yourselves.

Why would they want to do that to a company for which they work? Maybe somebody could tell me that because I do not understand that kind of thinking, that kind of rationale. We have no evidence. You raised and industry raised and some politicians raised in the days of Dr Ham the same kinds of arguments.

I have been in this business a long time. I spent 10 years in mining myself. I do not know of one single bloody instance where any worker abused the right to refuse to do unsafe work. I will tell you that the workers exposed to that ought to have. I say they are irresponsible; they should have shut that down, because that is a bloody disgrace.

I would like you to go to some of the handouts, particularly the one to Mr Leroux. This is topical because it also involves the newly organized employees of Dona Lake. This man was involved in organizing the drive on our behalf. He was penalized during the drive, given a 10-day suspension for infraction of the health and safety rules. You will notice that the supervisor instructed him to do certain things on 17 December. He refused to do them. He also, though, called the Ministry of Labour. The same supervisor who penalized him earlier and gave him a 10-day suspension for doing unsafe things now instructs him to do unsafe things. You will notice the mining inspector says, "My findings are that the worker by refusing and the supervisor agreeing that the work was unsafe has satisfied section 23(3)(4) of the act."

You wonder why we get a bit sceptical about inspectors. This man called the Ministry of Labour. The Ministry of Labour inspector called the company and said, "Why are you jumping all over this man?" That is why the supervisor complied with 23(3)(4). But they do not address the fact that two weeks earlier he had been given 10 days off for a safety infraction, and now they instruct him to do unsafe things. No infraction; everything is fine; everything is wonderful.

I just want, as well, to bring briefly to your attention the report of 18 August 1989. You will see throughout that report my notes, but that again is an example where electrically underground the rock bolts and screens and everything are energized, accidentally energized. Two people using the trolley wonder if the world is turning upside down on them. No charges. It tells us they will consistently practise the written

procedure to avoid a repeat of this incident. Terrible incident, should not have happened, but they are not going to do that any more.

I suggest to you that when I drive down the highway drunker than a coot and I get caught, the policeman does not say to me, "Look, if you don't do this any more, I won't lay any charges." I suspect you know that too.

The other one I want to bring to your attention is a letter of 10 January written to the compensation board, where a worker passes out at a mine. That was at the end of March. Somebody goes in and does a graph sample of the material he was exposed to, sends it off to the Ministry of Labour lab and on 20 May we get the analysis back. Do not forget he was overcome at the end of March; 20 May we get the analysis, and what a wonderful analysis it is. The compensation board admits probably few doctors in Ontario would understand that anyway because there is no industrial doctor.

That is all I have to say. Mr Bell will want to say something to you briefly about the documents appended to our brief put there by him, and I turn it over to him.

Mr Bell: In the appendix, instead of going through each item, what I would like to do is go right to the last page of the ministry orders, which is page 4 of 4. I would like to go to order numbers 14 and 15: "All worker safety representative tours are to be filed with our Ministry of Labour office. All additional action taken by these inspections or when all outstanding items—"

Mr Callahan: Where exactly are you?

Mr Bell: That is on the last page of the original—

Mr Callahan: Of the original brief?

Mr Bell: Yes, the very last page. What it basically says in the last order is that the companies must now file a copy of the worker safety rep tour with the ministry, must comply with that and inform the ministry when they have complied with it. The reason that was done is there were items that were brought up by myself as the worker safety representative which were not addressed. We have given you an example of three different times it was brought up and of the fact that the ministry ended up writing orders on it. This was not an order written by Francis Bell for the Steelworkers; it was not written by Moe Sheppard; it was written by an inspector who finally got fed up.

Just to give you an idea, you see 15 orders this time. We had three inspections over a four-month period and there were a total of 42 orders

written. When we advised the mining health and safety branch when we met with them in December, because we were so concerned of where the trend was going, we met with them in December and that was following the first meeting we had with them in June, they said, "Maybe they are not a good employer; maybe we had better be there more often." When we advised them that the company has said to the union, "We will not give you a copy of our reply to the orders, because you may use that against us," that certainly caused us to have some scepticism.

What we really think is going on is we do not know what they are replying to the ministry. If they are replying and saying things are done, we think that if the ministry came in and checked, it would find out that some of those items that they are replying to in fact have not been done. That is why the order was written. We have also requested—I did it personally. I requested that the inspector come back and check to make sure those orders are complied with. The reason we did that is maybe then we can get our employer to finally wake up so we do not have the incidents like the pictures you saw and like the reports that have been written here.

It gets pretty hard to tell your members that the act can work for you when you have this continual problem going on all the time. I think it shows you a trend that is in our industry, whether the MAPAO wants to admit it or not, and that is there is an accidental hiding of records, the accident rate is actually a lot worse than what it is and miners, instead of progressing, are regressing.

I will tell you that I get pretty tired of having to go to families and say, "John is in the hospital today because he got hurt" and "You should go up and see your husband" or "Go up and see your dad," or having to go to a family and say, "Joe got killed on the job today and we have started the investigation."

By the way, when we speak to one of the members of the family who is not in too much grief because of the fact that we have to tell him some pertinent information, such as, "This item was brought to their attention before and it has never been dealt with," it gets kind of hard to continually go back and tell him, "We are going to correct it," and it does not get corrected.

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I think that you people have a responsibility and it is a very simple responsibility: You have to make workers an equal partner in health and safety. If we are anything less than equal, then

we might as well not be there because we cannot do the job. The final decision is always left to the employer and we are not treated as equals. Then what is happening is in the pictures you saw here, the pictures that were passed around and the stuff that has been appended to the report given to you today. It is about time that we were treated as equals.

I hope when you go back you will let the minister know that the people up here are telling you one thing, that workers have to be equal to make the system work. Thank you.

The Chair: If we are to stay in our 30 minutes, we do not have much time left, but Mr Campbell, Mr Hampton and Mr Wiseman.

Mr Campbell: I will be brief. When we heard from the association yesterday, it was stated that lost-time accidents were lower than the industry average and you are saying that they are not. You are saying that is not so. Generally, throughout the mining industry—

Mr Sheppard: A coverup goes on.

Mr Campbell: Hang on now. I do not have much time, so give me time to ask here.

There are fatalities, lost-time injuries for people who are in hospital for an extended period of time for very serious accidents, and the ones you described here that are lost-time, but that is where you say the coverup is. Is that what you are saying?

Mr Sheppard: I just told you they get lost. The guy who spends three weeks in the nurse's station is paid for by the company; nothing is shown. He agreed.

Mr Campbell: I think it would be helpful to this committee if you had—

Interjection.

Mr Campbell: Yes, I know, the reporting process. That is what they said, that it was not reported. I have statistics before me that show definitely a trend downward and you are saying the reason for it is a coverup. I know the Steelworkers are very active in this area, certainly in Sudbury, and I know you are very active in health and safety and all other aspects. What statistics do you have to show the rate of coverup, the kinds of things you are talking about?

Mr Sheppard: I can give you the names of a whole lot, if you want to investigate them. We have given you examples this morning of coverups. You want the volumes. The volumes are not great enough for you. Is that your problem?

Mr Campbell: I am trying to find out information, that is all. I am not trying to be argumentative. All right? I come from Sudbury. I do understand the problem a little bit perhaps.

I think what I am trying to determine is, are these individual mine sites? Are the industry averages right across? That is what I am really after.

Mr Sheppard: In the northwestern Ontario section that I deal with, they are across the board; worse in unorganized companies than they are where we are present or there is a union present. Let me tell you a bit about the company with the 487 incidents. There is a comparable company in the same area. They have four, but they also have no union.

Interjection.

Mr Sheppard: I was not born sceptical.

Mr Hampton: I want to go over some of the things you have said to us. You are right that there has been a lot of concern raised by industry that somehow workers who otherwise are responsible for running very extensive machinery, who are responsible in their own communities, cannot be trusted to be responsible with respect to health and safety.

For example, in a letter to the Premier, the head of the Canadian Manufacturers' Association says that all that is needed is what is there now, that the right to refuse that is there now is enough and would do the job. I want to ask you: What does the right to refuse that is there now in the industry you are in amount to? What does it do? How effective is it?

Mr Sheppard: Usually, in most cases, it is an invitation to bring down the wrath of all management upon you if you exercise it. Right? There are a number of things that you can do to a miner that are not disciplinary in nature, that do not look disciplinary. Put him on a midnight shift. Take away the partner he has worked with for a long time when they do good work together. They fit, they are a team, they make good bonus. Put him in the ditch.

Those are not, "We'll take money away" or "We are going to suspend you," but these are disciplinary in nature and they are just as effective; in fact, probably more effective than if you said, "I am suspending you for 10 days." That is what happens when you draw attention to yourself, when you become meddlesome, troublesome. Right? "Why don't you just behave like everybody else and stop making a nuisance of yourself?"

Miners know that. Somewhere or other they pick up that management will not be terribly happy if they go around picking those things apart and generally costing money. This business here—you know the first thing we got from that company when we raised that issue? It was the cost: "Do you know where the cost is going to come out of? It will come out of the next agreement." We are going to have to pay for that in the next agreement.

Mr Hampton: You had an incident about a year ago where a miner died. As I understand it, there was a Ministry of Labour investigation of that death. I wonder if you could just tell me a bit about it, how that miner died and what exactly the investigation showed?

Mr Sheppard: Are you talking about the one at Mattabi?

Mr Hampton: Yes.

Mr Sheppard: That was a case where you had remote machines operated by radio-controlled frequency and the machine that killed—the killer machine, if you will—was being tested because it had not been operating properly. The control of the killer machine was taken away by another machine in a stope below the miner. About 70 to 80 feet below him, the controls of the second machine controlled the actions of the killer machine, and it ran forward, picked him up in the bucket and he and the machine fell about 100 feet and it killed him.

We had an inquest into that. There is a lobby going on internally by the Ontario Mining Association to the provincial government that there ought not to be licensing of radios in underground mining operations, that they are quite capable of looking after their own affairs. It is a question of too much paper and too many rules and regulations, and they would prefer—

Mr Campbell: The licensing of radios is federal, not provincial.

Mr Sheppard: I am well aware of that. I said they were lobbying at the provincial level.

Mr Campbell: Well, they are lobbying the wrong one.

Mr Sheppard: Who in turn will lobby presumably the federal people.

Mr Campbell: That is not the way it works. I am sorry to interrupt.

The Chair: Mr Hampton, we are out of time. Could you wrap up? Then we can give Mr Wiseman a chance, so all three caucuses have had a chance to ask questions.

Mr Hampton: The question I merely wanted to ask was, I gather that there had been some problems with this machine, and that this issue had been raised before at Mattabi Mines, and even after it was raised, somebody ended up dying because of the malfunctioning equipment.

Mr Sheppard: Forgive us if we get a bit blasé, but we hear this stuff and we think it just sort of gets lost in the translation. But you are right, it goes on and on and never ceases. We get blasé about it.

Mr Wiseman: Moe, I always like your presentations. You put a lot into them.

Mr Sheppard: I put a lot into it because there is a lot going on out there and I did not make it up. Remember that.

Mr Wiseman: No, but you are enthusiastic and everything about the way you make your presentation, more so than some others. Last year some of us on the committee went through quite a few mines. I do not think, as I recall, that I have seen a mine with washrooms or bathrooms like this one you showed today. I know, for illustration, you would pick probably the worst one, but I wonder if it is a unionized or nonunionized mine that has that kind of washroom.

Mr Sheppard: Organized. We represent them.

Mr Wiseman: It has been in business for 40 years. Why in Sam Hill would it take a person like yourself who is so forceful and everything 40 years to have management clean that up and not have better facilities in the mines than we are seeing there today?

Mr Sheppard: Oh, you think that is the only one like that in the province.

Mr Wiseman: As I say, the ones we were in, and we were in a fair sprinkling of mines—

Mr Sheppard: Did you go looking for toilets?

Mr Wiseman: I never saw one as bad. I do not recall the name of this mine—maybe it is just as well we do not know. I just wondered if it is organized. I thought you were going to tell me it was an unorganized mine.

Why it was not corrected or something done and it took 40 years to clean up?

Mr Sheppard: The problem is that outside of the Sudbury basin, Inco and Elliot Lake, that is fairly representative of what is going on in mining. You are operating under a misapprehension that we went and got that and it is the only one like it. Do not be persuaded by that, my friend.

Mr Wiseman: No. I just wondered if it was the worst.

Mr Sheppard: It is bad, but I do not know if it is the worst. I am sure if we looked around we could find something worse.

Mr Wiseman: Why were the union members not in there bringing that up as a condition, that that be cleared and cleaned up before this?

Mr Sheppard: They have. I could show you how things are in 15 minutes that are almost as old as I am—that is pushing it a bit—where that has been on the agenda for more than 20 years along with a whole lot of other stuff. Bear in mind what I told you. When the Minister of the Environment supplied enough heat to that waterline that the spigot fell out, it was a government agency.

The Ministry of Labour inspectors go to this and see it. The Minister of Labour himself has seen it. The Mining Legislative Review Committee has seen it. Nothing got changed. Do you understand that? Nothing changed. So do not be a bit surprised if the worker in that mine says, "By

God, I believe it is difficult to get anything done around here."

Mr Dietsch: Is not the question to ask, why have you not negotiated that in your contract?

Mr Wiseman: Yes. I would have thought it would have been a condition or something that they clean it up.

Mr Sheppard: You cannot negotiate it. If we have a strike for nine months, you will jump all over us and say we are being irresponsible to the community.

The Chair: Moe and Francis, thank you once again for coming before the committee and making a very compelling presentation.

That completes the presentations for the morning. In the afternoon we will start at two o'clock when we will hear from the Ontario Sewer and Watermain Contractors Association, so maybe you should leave those pictures up for them to look at. We are adjourned until two o'clock. Tables are reserved in the dining room.

The committee recessed at 1153.

AFTERNOON SITTING

The committee resumed at 1402.

The Chair: The standing committee on resources development will come to order as we continue our examination of Bill 208, An Act to amend the Occupational Health and Safety Act.

ONTARIO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION

The Chair: The first presentation of the afternoon is from the Ontario Sewer and Watermain Contractors Association. Mr Cochrane, if you would make yourself comfortable, we can proceed. I think you know the ground rules. There are 30 minutes for each presentation and you can take up as much of that 30 minutes as you want or you can save some time for members of the committee to have an exchange with you.

Mr Cochrane: Members of the committee have copies of the presentation or brief and if you intend to follow along, I would ask you to turn to the Introduction.

My name is Sandy Cochrane and I am the executive director of the Ontario Sewer and Watermain Contractors Association.

I wish to thank the committee for giving us an opportunity to state our opinions on Bill 208. Through this exercise, we will express our convictions about the need for improved safety on construction sites and make our recommendations as to how this should be done.

I do not know how many members of the committee are familiar with construction work sites, so I would like to try to paint a picture of one for you because I believe it is important to realize how great a difference exists between a construction site and an industrial plant site as a place to work.

Let us start by imagining a flat field several hectares in size with little vegetation. Further, let us imagine one worker in this field with, for example, a spade or shovel. This is an uncomplicated and relatively safe work site. Now let us add 200 or 300 more workers; let us give each a few tools, some of them electrically powered. Let us provide a few of them with large horsepower equipment, such as bulldozers and cranes capable of moving and lifting many tons of material. Let us dig holes, build walls, install floors hundreds of feet in the air between those walls and leave holes for elevator and equipment access in those floors. Let us visualize that one day the temperature will be near 30 degrees and

dusty and that a few weeks ago it was minus five degrees and icy. This has become a complicated and potentially unsafe work site.

Furthermore, it is likely that these hundreds of workers are employed by 10 or 20 different employers and belong to as many different unions. It would be unusual if more than a few of these workers were onsite when the job started and even more unusual if more than a few of them remain when the job is being completed. Add to all of this the fact that as parts of the work are complete, the work site itself changes day by day.

This is a very different picture from that over the average industrial workplace, which does not usually change from one year to another. I think it is also important to realize that due to the complexity of their business, constructors require a greater intensity of management in their business than do most others. This is partly due to the type of work I have just described and partly due to the competitiveness of the industry.

Success in this highly complex and competitive business is achieved only by management placing very tight controls on the manner in which the work is carried out. To water down authority in one area is apt to lead to a watering down in others and thereby a general loss of efficiency and safety in the entire industry.

A few words about background. The sewer and watermain industry in Ontario is comprised of over 500 employers who are engaged in the installation, repair and renovation of sewer and watermain piping systems. In total, the industry employs about 12,000 people.

The construction industry as a whole is comprised of about 50,000 employers who employ a total of about 340,000 people. The construction industry is the largest industry in Ontario with the second largest being the automobile industry.

With respect to safety, professional contractors long ago recognized the need for and the benefits of conducting their business in a safe manner. The vast majority of contractors were, and still are, committed to the objective of conducting safe operations.

To this end, contractors established the Construction Safety Association of Ontario, CSAO, about 61 years ago. It is funded directly by contractors from levies that they pay to the Workers' Compensation Board. It has a board of directors comprised of management and labour

and its policy is to obtain labour's opinion of all changes in safety regulation and, where possible, present to the minister a consensus point of view. CSAO is recognized as one of the most effective proponents of safety in the construction industry in the world.

This recognition is attested to by the Ontario Ministry of Labour in its August 1989 report entitled *Construction Safety in Ontario*, which states, "A compilation of accident statistics covering the period 1966 to 1987 shows that Ontario's construction workers are safer at work today than they have ever been."

The ministry's report also shows that the frequency of lost-time injuries dropped from 66.7 per one million man-hours worked per annum in 1966 to 46.9 per one million man-hours worked per annum in 1987—a decline of about 30 per cent. Over the period 1966 to 1989, the fatality rate dropped from 35.5 per 100,000 workers per annum to 11.2 per 100,000 workers per annum—a decline of almost 69 per cent. These figures demonstrate significant improvement in construction industry safety performance over the past several years.

If you have not had an opportunity to read this report, we would respectfully suggest that you do so.

It is important when looking at the charts in this report to understand the difference between the actual numbers of injuries and their frequency compared with man-hours worked. Obviously, the greater number of hours worked the greater the likelihood of accidents and this explains why the generally declining rate shows increases in certain years.

Another factor, however, comes into play. It will be noticed that the number of man-hours varies considerably from year to year. During periods when the industry is slowing down the less experienced workers are being released and accident frequencies drop more than average; conversely, in expansion periods when inexperienced and untrained workers are finding their way into the workforce, frequencies increase. The safety, education and training of all workers is imperative to alleviate this situation.

In addition to working to improve safety through the CSAO, contractors implemented an award-penalty system almost seven years ago, which is based on an experience-rating formula for individual employers. All contractors who operate in Ontario are bound to this system. The purpose is to award rebates to contractors who operate safely and to apply penalties to contractors who operate unsafely. The resulting

financial differential between safe and unsafe operators is significant enough to make it very difficult for unsafe contractors to compete against safe contractors.

Mr Chairman, I did not put an illustration or example in at this point to illustrate the point that I have been making. If you are willing, I will take a moment now and do so because it may put the point more clearly into perspective.

If we can take an example of a small contractor; a small contractor in the sewer and watermain industry may employ three crews. A crew is comprised of five men, so he would be employing 15 workers. The hourly rate in our sector of the industry is about \$25 on average. In the last few years it has not been uncommon for the workforce to accumulate 2,000 hours of work per year. That means, then, that the average income per worker in the sewer and watermain industry recently has been in the vicinity of \$50,000. This contractor, then, would have an annual work bill of \$750,000. The Workers' Compensation Board rate in the sewer and watermain sector is 13.18 per cent. So on that basis, then, this particular contractor would be paying a premium for WCB of just under \$100,000 per year.

A safe contractor on the present award-penalty system—at the extreme end of the scale a contractor who has a zero frequency of accidents will be awarded a 60 per cent rebate. Therefore, his costs for WCB, instead of being \$99,000 per year, would be closer to \$40,000. On the other hand, an unsafe contractor will be obliged to pay the full rate, which is \$99,000. But if he has had a bad record, he could be penalized up to the amount of an additional 120 per cent. That would mean, therefore, that his total costs for WCB premiums would be in the vicinity of \$217,000 to \$218,000. Therefore the difference between the safe operator and the unsafe operator is \$177,000 in this case.

To put that figure in perspective for you, an operator in this industry who has an annual wage bill in the vicinity of \$750,000 was probably doing an annual volume in the vicinity of \$1.5 million. If he is able to make a profit of between four and five per cent per annum on his volume before tax, a net profit, his profit opportunity is \$75,000. So you can see, therefore, that the unsafe operator operating against a safe operator in competition, and against his need to make a profit, cannot compete. In fact, he cannot make a profit and therefore he cannot stay in business. This penalty system has been in place now for seven years. It has done an excellent job of

focusing the employer's attention on safe operations. I think that this is a difference that exists in the construction industry but does not exist in other sectors of industry.

Present legislation: It is important to keep in mind certain requirements of the present Occupational Health and Safety Act. Of most significance to construction employers and to Bill 208 is section 13, which squarely places on the constructor's shoulders the responsibility of ensuring that the act is complied with, that workers comply with the act and that the health and safety of workers is protected. The constructor must also ensure that subcontractors and their employees comply with the act and that the health and safety of workers is protected.

Given this responsibility, it would seem only reasonable that the contractor be at a reasonable liberty to decide the means of discharging it. It appears to us that by granting effective power in some areas to committees and certified workers there is a danger of this single responsibility being divided. What this may lead to is a situation where a court may have to decide who is responsible for an accident.

Other related sections of the present act are:

(a) sections 14 and 15, which impose specific duties on employers;

(b) section 16, which covers the duties of a supervisor, including advising workers of dangers, ensuring that they work as the act requires and taking every precaution for the protection of workers;

(c) section 17, which places certain requirements on workers such as working in compliance with the provisions of the act, which he can and may do if educated as to what those provisions are; reporting to his supervisor any hazard of which he knows; and not using equipment in a manner that would endanger himself or any other worker.

In summary, the constructor is made responsible for safety and certain requirements are made of supervisors and workers to ensure that constructors can reasonably accept that responsibility. Any upset of this arrangement is liable to disturb the continuing downward trend of accident rates. We strongly believe in this basic arrangement. We further believe that education as to the requirements of each party is the starting point for further improvements in accident prevention and workplace health.

Recommendations: This association's charter includes a commitment to improving workplace safety. OSWCA supports the proposals put forward by the Council of Ontario Construction

Associations in its brief submitted to this committee on 15 January 1990. So far as the specifics of improving safety in the construction sector of the industry are concerned, OSWCA recommends the following:

1. That the established and successful safety agency, CSAO, remain autonomous, and the employers' award-penalty system be retained. CSAO's role of working with the industry to implement measures that will improve safety must be retained and expanded. The effective award-safety system must be continued and, if possible, be made to respond more quickly to infractions.

2. Employers must continue to be responsible to effect safety policy on their construction sites and continue to have the authority to directly enforce such policy and not delegate the responsibility to a labour-management group.

3. All construction employees, including supervisors, be given training. It is unrealistic to train a select few, insert them into the workforce on only the larger work sites and expect this to have a noticeable impact on safety.

4. Direct communications between the minister and his officials and the construction employers must remain in place. We believe that it is vital that the minister hear directly from the key parties so that he is enabled to establish balanced and effective occupational health and safety legislation and regulations.

5. The policing of construction sites and the right to stop work must remain with the Minister of Labour as an impartial arbitrator on day-to-day issues. With the object of enforcement being to ensure improved safety performance the Ministry of Labour must be given adequate personnel and facilities to perform this role.

As much as OSWCA is committed to improving safety, it is opposed to Bill 208. Some of the problems created by Bill 208: our main concern is with the proposed agency and the reasons for our concern are:

1. The agency is proposed to be organized on the basis of a joint committee comprised equally of management and labour representatives. It is our experience that in practice joint committees, when dealing with other than hands-on issues, become confrontational and cannot achieve consensus. Also, in our experience, joint committees do not lend to a fair representation of the interests of both parties.

2. The agency does not provide for direct access by the key parties to the minister. We believe that it is vital that the minister does have direct access to the key parties and vice versa.

We do not believe that the minister can carry out his or her duties otherwise.

3. The agency does not appear to be accountable other than to itself, while holding employers fully responsible to implement policy without the authority to administer the policy. This is unworkable.

4. The agency does not provide for representation on its board of directors joint committee for the largest part of the construction workforce, namely nonunion employees. Nor does it provide adequate representation on the joint committee for construction employer agencies that do represent the bulk of their industry.

5. CSAO has 61 years of experience as an effective training and education facility. It now has a sufficiently broad labour directorship and policies which enable labour to make full contribution to its education, training and research programs. To change its focus either by changes in the directorship or by giving a completely new agency powers over it could destroy it.

6. It is obvious that in order to achieve optimum workplace safety the maximum possible contribution from the labour force must be obtained. This contribution must be used in the best possible way. To subject workplace safety to the same kind of confrontational contract negotiations that already take place between management and organized labour is absurd. It is only necessary to review the divergent opinions expressed by labour and management representatives to this committee to recognize the limited likelihood of a meeting of the minds.

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7. Certain of the powers of the agency are excessive. The right to seize documents is easily capable of being misused. The right to decertify poor performers in the manner presented in Bill 208 clearly could lead to abuse. Therefore, this right must remain with the Ministry of Labour with its current terms of reference left intact in this regard.

8. The agency's automatic budget increase will add cost when cost-effectiveness is needed to keep Ontario, which lives and works in the construction industry's products, competitive in a world economy in which trade regulations are changing rapidly and free trade with the United States of America is developing.

We have other concerns:

1. We do not believe that contractors can apply Bill 208 in a practical way, because it does not recognize the basic characteristics of the construction industry.

2. The notion that a construction worker with short training and with no practical experience outside of his or her own specific trade will become able to recognize a situation that warrants closing down a highly complex work site is ludicrous. Equally absurd is the idea that a supervisor, having recognized an unsafe situation or having had an unsafe situation brought to his attention, would not take appropriate action. In fact, we maintain that it is better to educate all workers than to create a police force.

It is already a requirement under section 17 of the Occupational Health and Safety Act that a worker report such things to his or her employer or supervisor. Should the employer or supervisor still fail to recognize the danger, each and every worker has the right, under section 23, to refuse to work.

The education of workers in their rights and duties is an important part of the education which we believe all workers should have. If certified workers are given the right under Bill 208 to stop work, and since this right would only be exercised in the event of a dispute, there is a danger of this right being misused.

There is an additional danger of having certified workers with stop-work powers. It is not possible in any workplace for a person to have that kind of power without being perceived as having a further authority, thereby creating confusion among the workers as to who is the boss.

As time goes by, construction is becoming more and more technologically advanced. We do not believe that an individual, no matter how intelligent, can, after a short training period, be given the authority suggested by Bill 208. It is our conviction that the way to further improvement in workplace safety is by long-term education of all workers, not by having a larger police force. A police force cannot take the place of a safety-motivated worker, and of a safety-motivated employer for that matter. They both would carry their safety training in their heads, wherever they go and whatever the group.

Conclusion: OSWCA continues to fully support the objective of improving safety in the sewer and watermain sector of the construction industry, and in the construction industry as a whole. We believe that the proposals put forward by the Council of Ontario Construction Associations and OSWCA provide effectively for the basic tenets of Bill 208 as they apply to the construction industry as follows:

1. On-site hazards to health and safety will be reduced.

2. Both workers and employers will be more involved in safe operations.

3. More thorough training and more safety information will be provided to all on-site personnel, including workers and supervisory staff.

4. Risk control will be improved.

5. Joint and singular responsible behaviour will be increased.

6. Greater adherence to the Occupational Health and Safety Act regulations will be encouraged.

7. Effective reward/penalty systems will be retained and enhanced where possible.

8. Safety management will become a partnership between employer, worker, the construction safety association and the Ministry of Labour.

OSWCA is opposed to Bill 208 because in its present form it will in many cases leave job site safety to be negotiated. The possibility of some consensus being reached on its content can surely be judged by the disparity in the submissions to this committee.

Bill 208 is intended to improve safety, which is in the employers' financial interest. Construction employer associations, however, are unanimous in their condemnation of the bill as proposed. The obvious conclusion, therefore, is that employers are sincerely convinced that Bill 208 will not improve health and safety in the construction industry.

We therefore very earnestly request on behalf of Ontario's construction industry that if Bill 208 is to pass into law in anything like its present form, the construction industry be exempted for at least 18 months. During that time a construction-industry-specific program could be developed and implemented, based on the recommendation of employers who, by the act, are responsible for safety. We are convinced that with the impetus provided by Bill 208 hanging over its head like the sword of Damocles, the construction industry will provide the ministry with universally backed proposals of practical value. These proposals would fully satisfy the basic tenets that are the original premise of Bill 208.

Mr Mackenzie: On pages 3, 4 and 10 you refer to the Construction Safety Association of Ontario, the inference being, I think, that it is part of the answer as far as your industry is concerned to safety in the workplace. I wonder if you can tell me how many labour representatives serve on the 100-man board.

Mr Cochrane: On the 100-man board, I believe it is 15 at this point.

Mr Mackenzie: My information is that it is 13. You say, in point 5 on page 10, that it now has a sufficiently broad labour directorship and policies which enable labour to make a full contribution. As you are probably aware from the briefs presented, it does not have universal support—as a matter of fact, very little support from the organized sector of the workers. As well, I wonder why, if we are concerned with the unorganized workers, there are no unorganized workers on the board of the CSAO.

Mr Cochrane: I cannot answer your other question. I wish I could. I think that you recognize, as most everyone does, that to find adequate representation for the nonorganized members of the labour force is very difficult. I think that is accepted. I am quite willing to accept your proposal that perhaps organized labour is not satisfied with its representation on the board of directors at the Construction Safety Association of Ontario.

There is one other point that you do not want to overlook, however, and that is that, as has been recommended by Bill 208, there is a joint committee on occupational health and safety at the construction safety association which is 50-50 in terms of representation.

Mr Mackenzie: The other thing is, you also make reference to what you call the Ministry of Labour—and you are not wrong; it has been given to us—pamphlet, Construction Safety in Ontario. You refer to it on page 4 in your brief, and you quote any number of figures on the improving safety record position of your association in Ontario in construction.

I am wondering if you are aware that the report Construction Safety in Ontario, which you quote—and certainly in some other presentations; they have all referred to the Ontario Ministry of Labour—that the figures in the graphs in that report are, in a majority of cases, not Ministry of Labour figures.

Mr Cochrane: That is not my understanding of the report at all. My understanding is that the figures were developed on research that was done by a certain author who was called from retirement to do a study and provide the ministry with the figures which it subsequently produced.

Mr Mackenzie: I have no idea whether or not they may or may not be correct. That is not my point. My point, however, is that we asked that question of our research people just a couple of days ago in Toronto and they came back to us with the report on Construction Safety in Ontario. It shows, for example, that the figures come from the Construction Safety Association

of Ontario. COCA is also listed as a co-source for one table. Note this report contains 20 statistical tables with data derived from the above sources. The construction safety association is cited as the source for 11 of the tables and partial source for two others.

As I say, without necessarily disputing the figures, what I am simply saying, as the workers have clearly said—I am talking now about the construction workers—is that they do not have confidence in CSAO, and the figures you are quoting from the Ministry of Labour are in many cases your own industry figures. That certainly raises some questions.

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Mr Cochrane: That is not my understanding of the source of the information. My understanding was that the data were developed as I have just described, it was produced and then supplied to the Workers' Compensation Board, which in turn supplied the information to CSAO, and others probably, including the Council of Ontario Construction Associations. That is my understanding of where the information came from.

Mr Mackenzie: I think there is some misunderstanding then, because the seven sources are listed and the point is made, as I say, by the ministry people that at least 11 of the tables come from the Construction Safety Association of Ontario figures.

Mr Cochrane: I have not seen your report, so I cannot really discuss it with you intelligently, but it would seem to me that if the Ministry of Labour produced information that did not give adequate credit to those who supplied the information in the original document, then something was wrong.

Mr Mackenzie: In fact, they do, if you look at the original document.

The Chair: We are running out of time.

Mr Dietsch: In relationship to the question about the sources of information, Mr Mackenzie is quite right. In the research paper that was done, it indicated that those were the sources where the information was gleaned from. However, the information this paper does not say is exactly what information came from what area. Let me ask you this way: Do you feel comfortable with the figures? Are the figures comfortable and accurate in your mind?

Mr Cochrane: It is our impression, and there is no point in this industry, and certainly not in our sector, accepting information which is wrong, because safety is extremely important to

those I represent, for any number of reasons that you wish to identify. If the information which was produced in this report by the Ministry of Labour is incorrect, then I think we all should know that.

Mr Dietsch: I agree. I could not agree with you more.

The question I want to ask you in particular is in relationship to page 9 of your brief and the problems created, in your opinion, by Bill 208. You speak out when dealing with other hands-on issues becomes confrontational and cannot achieve consensus. I would like you to explain that to me a little bit more, because there are, as we would all recognize, a number of organizations—such as individual collective bargaining that has been done by many groups. You know, they have reached consensus, and I guess I do not quite understand what you mean.

The issues that would be dealt with by the agency are the certification guidelines for individuals to become certified by, and would in fact be the training that would be delivered by the associations under them, the makeup of the body of individuals being 50 per cent labour and 50 per cent management, that would be dealing with health and safety issues. So the hands-on approach would be health and safety. I am not quite clear on what you mean by your comments.

Mr Cochrane: I guess that we would interpret "hands on" as being somewhat different. We have had some experience with joint committees, one of which I mentioned to Mr Mackenzie a few minutes ago, and we found that there was more to the sort of goodwill that was necessary to deal with subjects such as health and safety. We quite understand and are involved on a regular basis in the confrontational approach to organizing collective agreements. That is one thing, but we feel that sort of approach tends to be taken to these other things. That has been our experience, and that is why we have concerns about this.

Mr Dietsch: The point that you raised with Mr Mackenzie was in relationship to the makeup of the CSAO?

Mr Cochrane: There is an occupational health and safety committee within CSAO which is on a 50-50 basis.

Mr Dietsch: But the CSAO governing parent group is not.

Mr Cochrane: The board of directors is either 15 or 13 members who are labour out of 100.

Mr Dietsch: Do I have time for one more question? The last point I would like to raise with you ties in together with that at the top of page 15

of your brief. You mention that OSWCA is opposed to Bill 208 because in its present form it will, in many cases, leave job site safety to be negotiated.

Mr Cochrane: Yes.

Mr Dietsch: Do you not feel that the stronger partnership of workers and employers with respect to joint health and safety committees is going to create a more collaborative, conciliatory working approach than actually negotiating for all those changes?

Mr Cochrane: No. We fully support the collaborative approach; our problem is with the mechanics of Bill 208. We do not believe that it will lead to an enhancement of safety, for the reasons that we have outlined. We just do not believe that will happen. In the industry which I come from, the average size of the contractors is relatively small as compared to, say, the general contractors.

What you find is that in many cases the owner of the company acts as his own supervisor. That means that from a personal standpoint, he is placing himself in exactly the same risk circumstances from a health and safety standpoint as his employees because his work is on this site. He is extremely concerned from a personal standpoint. Moreover, this industry is populated with immigrants who have passed their businesses on to family and we are now into the third and fourth generations, so from that standpoint they have a very personal interest in seeing safety enhanced on the site.

Moreover, the nucleus of the workforce in small companies usually is retained through the years because those skills must be retained. Therefore, we are not dealing with strangers. We are dealing in this industry with family and with valued employees. The on-site circumstances leading to increased safety have been worked over by those people on that site dealing with their own circumstances. Now we are talking about Bill 208, which will apply another layer of administration on top of that kind of relationship, and we feel that it is going to break down a good working situation which is already there and which is enhanced by the activities of CSAO and the very effective award/penalty system that is in place.

The Chair: We thank you very much. We know that you came some distance to make the presentation to the committee and we appreciate that.

Mr Cochrane: Thank you for your time.

DRYDEN AND DISTRICT LABOUR COUNCIL

The Chair: The next presentation is from the Dryden and District Labour Council. I see Mr Miranda, and perhaps others, I do not know. The committee welcomes you here this afternoon. We are pleased that you are going to make a presentation. I think you know that the guideline is 30 minutes, so if you would introduce your gang, we can move on.

Mr Miranda: Sitting with me up here is one person you recognize who was here earlier, the president of the Canadian Paperworkers Union, Local 105, which is the largest local union in Dryden, Mark Weare. On my left is the secretary-treasurer of the Dryden and District Labour Council, which represents in the neighbourhood of 2,000 workers from the public, from private, from the male and from the female denominations.

Let me start off by saying that on behalf of the Dryden and District Labour Council, we wish to thank the standing committee on resources development for this opportunity to address our concerns about Bill 208. We also wish to take this opportunity to welcome this committee back to Dryden, but we certainly hope that your deliberations over Bill 208, an Act to Amend the Occupational Health and Safety Act and the Workers' Compensation Act, will produce a better result than your efforts on Bill 162.

If I may just stray away from my notes—I have a bad habit of doing that—I want to suggest that I am a bit perturbed over the amount of advertising that the committee, or whoever is responsible for it, did in our local media regarding this committee being here in Dryden. Last Wednesday, to my understanding, was the first time that I saw anything whatsoever in our local paper, which is a weekly. It is very, very discouraging to talk about something as sensitive and something that is as serious as this particular bill without enlightening the public. I hope that is not what your intention is on the word "restriction," which I am sure we are going to be talking about later.

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As a northern community, we are especially concerned about reform in occupational health and safety because our communities are resource-based, and of course pulp and paper, mining, forestry and logging are all significant contributors to the ever-growing numbers of deaths and injuries. And the geographical isolation of our communities means that our work-

places do not have the regular attention of the Ministry of Labour, which makes the right to act to protect both ourselves and our brothers and sisters absolutely crucial.

Like most labour organizations in this province, our labour council welcomed Bill 208 as a basis on which we could build to produce the best health and safety legislation in North America. We identified a number of areas that needed strengthening in the original bill and support the Ontario Federation of Labour's submission to this committee.

But it is clear, from the proposed amendments that the minister introduced in October, that this Liberal government is willing to accept one worker dying every single working day and more than 1,800 workers injured as the cost of doing business in this province. I want to repeat that this Liberal government is willing to accept one worker dying every single working day and more than 1,800 workers injured as the cost of doing business in this province. Somewhere around 290 deaths, quick mathematics for us who live up here where there is a little more ice than there is down east, is somewhere in the neighbourhood of about 14 National Hockey League teams.

Occupational health and safety legislation is for the protection of workers and yet, when Premier Peterson receives a letter from the Canadian Manufacturers' Association threatening that groundswells of opposition, deliberately organized by it, the Canadian Federation of Independent Business and the Council of Ontario Construction Associations, to name only a few employer organizations, will grow out of control, this government is willing to accede to almost every single one of their demands. Well, it is not Laurent Thibault, who is the president of the Canadian Manufacturers' Association, or John Bulloch, who is the president of the Canadian Federation of Independent Businessmen, and their colleagues who get killed, maimed and diseased in Ontario workplaces; it is the workers in this province, and they deserve better.

You keep hearing from our employers that things are fine, that lost-time accidents are going down. Well, this committee more than any other understands that employers have deliberately underreported lost-time accidents in their attempt to avoid penalty assessments through WCB. We have no reason to believe that such practices are restricted only to the mining industry. So do not let this distortion be used to persuade you that gutting one of the most important steps forward

in workers' rights, the right to shut down, is acceptable.

If employers are prepared to hide lost-time claims, imagine what they would be prepared to do to avoid being labelled bad employers, which might allow their certified worker member the right to act to protect his brothers and sisters.

You have the evidence before you, in the minister's own advisory committee's survey of 3,000 joint committees, that it is not enough merely to legislate the provision of joint committees. We need the amendments to our committee structure that Bill 208 promises, like the provision of co-chairpersons, preparation time for committee members and the promise of additional training. But none of that alters the basic structure of our joint committees that maintains our employer's right to veto any recommendation, although it would now be in writing.

Giving a well-trained certified worker member of the joint committee the right to shut down an unsafe operation merely makes the internal responsibility system responsive to emergency situations. It is not providing a worker with a unilateral right. Our employers and supervisors have this right to stop work any time they want. But the number of deaths and injuries speak to their failure to use their unilateral right. To suggest that an agreement between the certified worker member and management is a step forward is not true. It is what we have now, and the fact that we are amending the law speaks to its failure.

Exempting workers with so-called good employers from the right to shut down means that they suffer almost a double penalty. The Ministry of Labour has a policy that exempts employers with good records from regular inspections, which makes our right to act even more crucial.

Although some employers have declared that the individual right to refuse has been abused, without supporting documentation, most people, even the minister, agree that it has not been abused in Ontario. If anything, the fact that several employers have indicated they have had only a few refusals over the last 10 years means that it is grossly underused in our province. So there is absolutely no reason to believe that the right to shut down would bring Ontario industry to a standstill, as predicted by employers in their hysterical response.

I remember 1979, even though I probably do not look that old, but I remember the arguments at that time when we as individuals were given the individual right to refuse. It seems about the same story, although the word has changed, but it

is consistent exactly with what was said 11 years ago.

You as a committee investigated the right to shut down by a worker inspector in the mining industry and unanimously recommended that it be legislated. Surely you would not have recommended such a legislated right without assuring yourselves that it would not be abused, and in fact your 1988 report did just that. And the evidence for the state of Victoria in Australia shows us that not only is it not abused but, if anything, it is underused. We need the right to shut down unsafe operations if we are to bring down the terrible toll taken in Ontario workplaces.

The proposal to restrict the interpretation of activity to one involving an immediate danger is a step backwards for all of us in labour. We have already been supported in our refusals over ergonomic issues as well as immediate lifting hazards. Referring these problems to our joint committees will not solve the problem since there are not regulations in this province requiring our employers to design their workplaces to prevent long-term repetitive strain injuries to which our members can appeal.

As well, the restriction on payment for the refusing worker to the first step only is a major step backwards from present practice in the Ontario Labour Relations Board.

It is essential that no other worker be assigned a job that has been refused until the issue is resolved. This government felt such an amendment was necessary in its earlier versions of its amendments. How can you justify not including this in Bill 208?

Bill 208, as it is written now, would restrict our inspections to only a part of the workplace, ensuring that the whole workplace be inspected only once a year. Again, this is a serious step backwards from present practice in many of our workplaces where our joint committee members have been inspecting the whole workplace on a regular basis. Inspections are crucial to the IRS to identify and resolve hazards before they become an immediate danger requiring a shutdown or refusal.

We see the emphasis on training in this bill as an important step forward but, again, the minister's proposed amendments will distort this opportunity to ensure proper training for all workplace parties. The imposition of a neutral chair in the agency will mean that the workplace parties will not have the total responsibility for determining the needs and the standards for training, and we find it very strange that a

government committee to the so-called promotion of partnership does not believe it can work. The imposition of a third party flies in the face of the very philosophy of joint responsibility being touted as the saving concept in health and safety by this government.

Giving the safety associations that have been criticized by other government committees a greater degree of self-determination, as stated by the minister, and allowing them to determine the labour representation on their boards will mean that the \$40 million that management gets now for health and safety training will not be diverted into effective programs and delivery systems.

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We are not going to repeat all the arguments and proposed amendments that have been placed before you by the Ontario Federation of Labour and all of the other affiliated unions across this province, or that we heard earlier today from our area. It is essential that you understand that the minister's amendments mean that the opportunity for us to move forward in health and safety will be lost. Increasing the number of joint committees and providing more training will do very little if you are not providing us with the right to act. All the meetings in the world, all the information and all the training do not clean up the workplace. It takes action, and if you are only prepared to leave the status quo, requiring a joint decision with management veto, then little will be accomplished.

This is the last day of public hearings, and we can only hope that all of you have heard. Workers in Ontario deserve the best health and safety legislation, as the minister promised, and you have the obligation to deliver.

I want to suggest to you or ask you, but perhaps I should use the word "plead," let's not get caught up in the political rhetoric, not on Bill 208. Conservatives, Liberals and New Democrats make up this committee, and it is very strange that those people getting killed on the job are also Conservatives, Liberals and New Democrats.

It is up to you as a committee, and whether you survive the next provincial election whenever it may be called or whether you do not, do the right things for the workers of this province. If you do not survive the next election, at least you will have the memory that you were part of making sure that we had the best health and safety laws anywhere in North America and that we led the country. Think about that. Vote with your conscience when you go back to Queen's Park. Thank you very much for your attention.

The Vice-Chair: Thank you very much for your brief, and obviously delivered with feeling, Mr Miranda. We will now proceed, and the first questioner is Mr Dietsch.

Mr Dietsch: I would like to question you with respect to page 2 of your brief: "If employers are prepared to hide lost-time claims, imagine what they would be prepared to do to avoid being labelled bad employers." In your particular company where you work, are they currently bringing people who have been injured back to work without reporting any claims?

Mr Miranda: There are people coming back to work who are not totally healthy in order to avoid going on worker's compensation benefit in the place that I work, yes.

Mr Dietsch: What has your union done to stop this sort of thing from taking place? Have you been supportive of the opportunity for people to come back on light-duty jobs and be paid by the company as opposed to the WCB?

Mr Miranda: One of the problems that we have is that we do not understand, when a person's hand, for example, gets crushed and he has got a swollen wrist, that when he is on WCB benefits there is light-duty work available, but if a person racks his hand up closing the gate of his half-ton on his own time, that same work does not seem to be available at work. There are two different messages going out: If you get hurt on the job, it is okay to come back and be called a working wounded; but if you get hurt off your job on your own, then we have no place for you in our plant.

Mr Dietsch: What has your particular union done to stop this sort of thing?

Mr Miranda: You will have to address that to the president of the local union, of my union as well.

Mr Weare: When it comes to reporting injuries and taking the proper time off, all we can do is take it to our membership, as we have. We have told them to report all injuries, to report that they have followed their doctor's instructions, and that is all we can do.

Mr Dietsch: Has your union objected to the company's bringing employees back? Have they agreed to it or what have they done?

Mr Weare: The only way we can do that with our company is, like I say, by taking it to the membership, explaining what their rights are and what their obligations are. But we have no right to tell the company how to manage its business, as much as we would like to.

Mr Dietsch: I guess the way I look at that sort of thing is in relationship to individual unions that negotiate contracts with their employers. If you have an employer who is continually calling employees back to work before they are healed, before they have a doctor's certificate, or if they have a doctor's certificate and your union does not take it up with the employer at negotiating time, that is what I am asking you, whether you have done something like that or not. Have you taken it up at that time of the year or when you are negotiating your contracts, or not?

Mr Weare: Every time we sit down and negotiate we try to improve the working conditions and quality of work for the people and there is improvement made in all those areas.

Mr Dietsch: We are trying to get at employers who are trying to hide these lost-time claims. That is what your brief says.

Mr Weare: Then put somebody in there and take a look.

Mr Dietsch: I want to ask another question. On page 3 of your brief at the top you specify, "Exempting workers with so-called good employers from the right to shut down means that they suffer almost a double penalty." In many union briefs and many management briefs, although they have had differences of opinion, some of the unions have indicated that employers are out there particularly trying to injure employees, and management is out there saying that workers are trying to shut down their workplaces.

There are both ends of the spectrum coming in here, and I would like to ask you, do you think that all employers are out there trying to injure people? What is your employer like?

Mr Miranda: I do not think for a second that employers are deliberately or maliciously attempting to injure people. However, at times, and I am speaking on behalf of a labour council with many employers in this town, it seems that they are missing everything but the bottom line, and I do not think for a second that you can put profits before people. There are some good joint health and safety committees in this town; there are some terrible ones; there are some that are nonexistent; and there are some even in a unionized shop which meet at lunchtime and they do their inspections after hours or on their day off. When you are looking at a town of this size, although it may be small compared to Toronto or wherever, we have got a little bit of everything here.

Mr Dietsch: So we agree that there are good employers out there and there are some that are not so good. There are some on both sides of the fence.

Mr Miranda: You normally do not hear about the good ones, but I will tell you, there are certainly a pile of complaints that we had, and not only from the organized side but also from the areas that are not organized.

Mr Dietsch: Should they be treated the same? Should employers who are not up to snuff with respect to their health and safety be treated the same as those out there who do? I am talking about your comment about your penalties and your incentives.

Mr Miranda: This is hypothetical in a sense, that we are starting to give rebates back, and I am quite pleased with the speaker before us because as a volunteer worker I was not aware that construction companies get kickbacks. I think the word was rebate. I should be careful, if they are good employers. But when you are starting to talk about X numbers of hundreds of thousands of dollars, I think that maybe a lot of people might have a tendency to close an eye.

Mr Wiseman: I would like to go back to Mr Dietsch's first question and page 2 where you say many employers have deliberately underreported the lost-time accidents. I wanted to get into this with Moe Sheppard this morning, when he mentioned somebody sleeping in a lunch room and one thing and another. Pardon me if I do not understand what all the union's mandate is, but I would think that one of the mandates, as well as negotiating for safer conditions, better wages, things like that, would be for what we are talking about, the safety of the employee.

I think Moe said this morning that maybe that accident comes back to you eight or 10 years down the road. If you know, rather than having read in one brief that somebody has said that and putting it in your brief, that these conditions are going on at your particular workplace, it would seem to me, as a small employer, that you would notify the Workers' Compensation Board as a union.

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The only other thing I can think of for why that is not done is perhaps that the worker is being paid at 100 per cent if he or she goes back and does light work or sits in the lunch room or does whatever it is. They get 100 per cent of their wages instead of 70 per cent of their wages.

If you are really concerned—and I think you are—why in Sam Hill have you not got hold of the

Workers' Compensation Board and said: "Get out here. These guys are fudging the books"? If you have a worker who will sign a paper and give you something to go on rather than maybe hearsay, that he was not able to go back to work and yet he was back there maybe just sitting around, like the example Moe gave, in a lunch area because it would not show in their lost time, I cannot for the life of me think that that is not part of the union mandate.

Maybe I am wrong. Tell me if I am wrong so I will know. It is near the end of these hearings. I have heard every time we went around that employers were hiding these, yet nobody actually said he brought in the Workers' Compensation Board and said: "Here is a documented case. Go after this guy."

Mr Miranda: One thing right off the top is that unions are not there to restrict our own members. It is a member's right, I guess, if that individual is injured and wishes to return to the work site. I do not think that we as a union would be very responsible by attempting to take that right away.

Mr Wiseman: Does he come back because he or she gets 100 per cent of his or her wages and fudges maybe—the lady is shaking her head here—that in 10 years it might come back on you, and gamble on that because he gets 100 per cent wages rather than take the 70 per cent wages, have it recorded that he was hurt on such and such a day in such and such a year, and be able to go back if that recurs?

Mr Dietsch: They have to report it anyway.

Mr Wiseman: What they said at one place when I asked a question on this is that somebody with a broken arm could go back and not be reported. I cannot for the life of me believe that a doctor would do that.

Mr Miranda: No, it has to be reported. That is my understanding.

Mr Wiseman: Why do the unions not take a vote on that and fight for that part of it?

Mr Miranda: I think you are overlooking something. Not every one of us union members is as aggressive, I guess, as I am. I am sorry, I will use that just to attempt to demonstrate a point. Some of us have a tendency to be intimidated by management and there is peer pressure on employees in their own departments. There are incentive programs, for God's sake, in many of the places in this town where if your department gets a year without lost-time injury, then there could be a treat at the end of the year. So you are up to day 250 and lo and behold somebody

sprains a wrist. His colleagues are breathing down his throat at the same time. So there is peer pressure on the workers. My God, we go to work to get a pay cheque every two weeks, the same as you go to work. That is the reason why we go there. We do not have any problem with the reputation we get at times for being an overly aggressive trade union movement. We do not have that.

Mr Wiseman: Could I ask you though: You say that employers are in it for making money and one thing and another, and now you have just told me and we were told last year in the mines that a lot of people are under peer pressure from the workers that they will lose their bonus if they do not. It seems to me they are going at it the same way. It is the money at the end rather than the safety of that person. You cannot have it two ways.

Mr Miranda: Because of the time, Mr Chairman, maybe this document on one individual's intimidation—and it is about a page and a half typewritten by an individual who is sitting here today; there are enough copies to go around—I think if you read that, the explanation is loud and clear of the amount of peer pressure there is on employees and workers.

Mr Hampton: According to your understanding, whose responsibility is it to enforce the health and safety laws? Whose laws are they?

Mr Miranda: They are the laws of the land. I guess it is our responsibility to follow them, because if we get hurt and it is unsafe, by God, we know about it.

Mr Hampton: But who has enacted these laws and who is charged with enforcing them?

Mr Miranda: The government does. They are the ones who legislate it. As I said earlier, I hope you have a conscience when you go back to Queen's Park. From there, there is the ministry, the company has responsibilities out there and the employees themselves have responsibilities out there.

Mr Hampton: Because we are in the town we are in—and like many towns, it is a community dominated by the pulp and paper industry—the gist I get from your comments is that the watered-down version of Bill 208 that the government is now proposing is little better than the existing Occupational Health and Safety Act. Is that the gist of what you are saying?

Mr Miranda: The watered-down, yes.

Mr Hampton: We had some discussion about this earlier this morning. There has been an investigation into the pulp and paper industry in

northern Ontario because there were so many deaths in the last three years. I understand there were four deaths in the Dryden mill.

Mr Miranda: That is correct.

Mr Hampton: How many were there across the northern part of the province in the pulp and paper industry?

Mr Miranda: Seven.

Mr Hampton: This paper mill is organized, is that right?

Mr Miranda: Yes.

Mr Hampton: So there is at least in place a body, a trade union or a couple of trade unions, that has some awareness of the Occupational Health and Safety Act and makes some attempt to have it enforced. Is that correct?

Mr Miranda: That is correct.

Mr Hampton: Yet there have been four deaths in the last three years in this mill alone.

Mr Miranda: That is correct.

Mr Hampton: There was a death that attracted a lot of attention about three years ago. I believe one of the employees was trapped in a chipper. Is that what happened?

Mr Miranda: There was a death to do with an auger.

Mr Hampton: Could you just give us the details on that?

Mr Weare: What happened in that case was that I believe they were changing the blades on the chipper. Underneath the chipper is a feed auger that takes the chips out and drops them on to a conveyor belt. While they were working on this, one of the people dropped a socket down. He went down one floor and went in the back door of the auger room, and while he was in there the auger started and the fellow was trapped, wrapped up in the auger, and killed.

Mr Hampton: What happened?

Mr Weare: He was wrapped and he was crushed to death in the auger. The reason that happened was that the two crews were not familiar with each other's walkout and tagout procedures. Basically that is what happened. There was no procedure written up and in place at the time.

The Chair: Mr Mackenzie, do you have a final question? We are out of time, basically.

Mr Weare: Just let me finish what I was saying. What came down was that it has always been our feeling that there should be laws and procedures put in place before any type of startup in the industry, and there is nothing anywhere

that provides for that sort of thing. As well, we are asking for more training. We want more training for our people. We want the reps to be better trained. We want that to make these types of accidents disappear. Those are needless accidents that should not be there. Had the training been provided, that person probably would have been living a happy retirement at this time.

Mr Mackenzie: Just quickly, I have been appalled at some of the questions that have been asked here today. Do you have the authority as a union to call somebody back in and see that they are paid rather than staying off on workers' compensation? Is that your decision or the company's decision?

Mr Miranda: It is the company's.

Mr Weare: We do not have that.

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Mr Mackenzie: So there is no authority whatsoever for the union to take that management action.

Mr Weare: No. Any time we get near a management action, they get a little crinkly.

Mr Mackenzie: If you had the right to have a say on that as it has been suggested by some of the members of this committee today, maybe then a tradeoff would be okay, providing you also had some say in the operation of the plant. Right?

Mr Miranda: I do not think we want the right to manage.

Mr Mackenzie: Fair enough.

The Chair: Doug, thank you very much for your presentation, you and your colleagues.

Mr Miranda: Thank you very much.

T. S. JONES

The Chair: The next presentation is from T. S. Jones, a private citizen, he says. He is the mayor of Dryden.

Just before his worship sits down, the question of advertising has been raised a couple of times. What the committee did was, when we looked at the kind of matter before us, namely a piece of legislation, we decided, as a committee, to invite those with particular interest in the matter to appear before the committee. So we notified everyone and then put an ad only in the local paper where we were going just to take notice of the fact that we were here or going to be in this particular community.

In a lot of the communities, we could not fit everybody in the room, even given that little

notice. So it was not an attempt to not make it public—we encourage that—but I could tell you that in a lot of communities we could not get everybody in the room even given the little advertising that we did. That is why we did what we did in terms of notification.

Mr Campbell: Further on that point, I have been through this before a couple of times and I think that if the public understands that the people who were invited, as you said, had a particular interest or were thought to have had a particular interest or had appeared on Bill 162 or other acts or other relevant subjects, in fact this committee would get a broad cross-section of the community. We have people from other parts of Ontario whom we were able to fit in on the last day of the hearing and they came quite a distance to do that. So I think, in fairness, that there has been a broad cross-section of the public represented before this committee. I would just reiterate that point.

The Chair: Let's not delay the presentation of Mr Jones. Mr Jones, we are pleased that you were able to come before the committee. I think you know that we have allotted 30 minutes to everyone and we are running a little bit behind, so we should get right with it.

Mr Jones: I would like it, if any member of the audience cannot hear, to hold his hand up so that we could perhaps turn things up a little louder because I had a little difficulty back there since I wear a hearing aid, and maybe others do.

I am here today as a private citizen, an undergraduate of the school of hard knocks, and I am still being educated. I call myself an elder from the sticks and perhaps today I am a voice crying in the wilderness, but I still am a consultant. My consulting work is practically nil now and is really confined to helping people in the Dryden area with some of their problems.

However, I still am an honorary director of the Ontario Pulp and Paper Makers Safety Association and take an active interest in safety. I speak having been a manager of the Dryden mill and a vice-president responsible for all Dryden operations, mill and woods, for some 15 years, before which I was the manager of industrial relations.

After being transferred to Toronto as the vice-president of Reed Inc, I retained my interest in safety during my time in Toronto by being a member of the Ontario Pulp and Paper Makers Safety Association and for two years was president.

Today, I refer mainly to my experiences as a manager. During my term as a manager, there were five fatalities. I know what it is like to go

and visit the homes of families when something serious occurs because I have done it. I can tell you that it is something that every manager dreads. I can tell you that every worker in a plant who thinks about it also dreads a fatality or a serious injury. But we are all human beings, and as you know, more injuries happen at home and on the highway than they do in an industrial plant.

Before I go any further, I just want to tell you that I am growing older and I get less complacent about the situation. I am in favour of the government making some changes in rules and regulations. But I do not want to see the work that has been done over the last 50 years or so and has produced good results in the province of Ontario possibly damaged by quick action and by not tackling the root of the problem of safety performance.

The root of the problem is how to maintain a good attitude and high morale in a manufacturing plant and other types of industry where there are groups of persons working. This the root of the problem. I do not think that the possibility of diminishing the efforts of the safety associations is worthwhile unless someone has made an objective summation that these changes, as proposed by the minister, will be beneficial and reduce injuries and therefore accidents, and also resultant costs.

Good managers support and use safety associations because they provide leadership and counselling to the industry, training programs, and assist in problems, particularly by using information from other sources that are not readily available to the manager, and also by providing details of other industry plant results.

Wise managers use resources such as head offices or associations, etc., as a source of material for management of the plant that they are responsible for. The decisions that are made at the plant are the responsibility of the manager and he either keeps his job or loses it on the basis of his performance.

In the industry that I have the most knowledge of, pulp and paper, the association puts out a monthly report covering all the plants, and it has a line drawn at the average so that every company, and as far as I know, every employee—because the results are generally put on the bulletin board and certainly discussed by most safety committees—has the opportunity to know whether the company is above or below the average.

If the company is below the average, then that is where the challenge should be: to at least get

above the industry average to indicate that the particular plant cares about safe production. I quote you two outstanding examples in the pulp and paper industry. One is a plant in a large urban centre called Toronto, with all the problems associated with a large plant in a large city, and the second is the only industry in a town in an isolated location. The plants are Dominion Cellulose Ltd in Toronto and Domtar Packaging in Red Rock. If you examine their safety records over the last 25 years, you will find that both these plants, one unionized and one not unionized, have always been leading the industry; first one and then the other has been in number one place. Their management and plant policies and procedures have been examined by many companies to try and be duplicated.

Any company examining their style of management and the results cannot help but learn something, but that does not necessarily mean that programs and procedures can be lifted and used in another plant, because we are dealing with people and we are dealing with groups of people in different locations. But it is a fact that in different locations and with different groups there can be very few, if any, injuries.

I wonder if the Workers' Compensation Board administrators have thought of keeping a separate record of the new automobile plants operated by the Japanese in Canada and the United States. I know that there have been many studies made of the Japanese style of management. Here we have now a chance in Ontario: examples of Japanese operating new plants with absolutely new employees, training them and certainly making their mark in the automobile market. Has the committee examined the results of this in so far as their injury experiences are concerned? I am sure that there are some lessons to be learned. I believe that these new Japanese-controlled companies do not rely on safety associations for the safety in their plants. I repeat that I do not think any manager relies on the safety association other than for leadership, counsel and assistance. The safety association has no clout other than example to its member companies, and it really is only as good as the weakest company in the organization, as far as results are concerned.

I believe, based on my experience of the government plan to change the makeup of safety associations, that to elect or appoint an equal number of workers to the board of directors is not the right move. I think they are barking up the wrong tree.

Many years ago the Ministry of Labour set up a labour management committee and it lasted only a few years before it was discarded. One purpose in setting up such an organization is that the issues will be settled by consensus, and this poses some problems. For instance, recently there was a tripartite committee set up as a direct result of a number of fatalities experienced in the pulp and paper industry, with a mandate to examine safety within the industry.

That report is still to be issued because I understand there is dissension on the issues, and thus we sit and and wait for recommendations because of the edict that a consensus report will be made. It is best, of course, if things are done by consensus but that is not how the real world operates. Someone has to be responsible and accountable if we are going to tackle problems and continue to have improvements.

I do not want to go over my time, so I am just going to miss a few things, but I hope somebody will take the time to read it afterward. My point here is that the safety associations represent different industries. Different industries have different problems. Why lump them all together and change them all at one time? I suggest that you take the four or five associations that are definitely at the bottom of the pole, as far as results are concerned, and make some changes to them to see if beneficial results can be obtained.

The Ministry of Labour points out that the organization that they are recommending has been tried out and adopted in other provinces. I am interested in what the other provinces and countries have done and I study such changes with interest over the years. What I ask the Ministry of Labour now is, has there been an improvement in the number of injuries in those other provinces where there is equal worker and management representation on safety associations? What are the facts in this case?

I look at my period as a manager as a happy one. My relations with the workers in the mill were always a concern to me. It was not my job to make them happy—happy is a relative term—but I wanted to earn their respect as being one that practised fair treatment, and I think you can check at the local mill and you will find out that that is how I am regarded. I think most managers are in this category and I think most things can be settled at the plant level between management and workers.

I understand that about 70 per cent of the workers in the province of Ontario are nonunionized. That is why it is important that workers or representatives be from the workforce. Further,

many plants and several industries in Ontario do not have the services of a safety association. I understand this is being given consideration by the Workers' Compensation Board and it should be. For this group of employees, while the injuries may not appear to be as many or the frequency as high as the plants that do belong to safety associations, nevertheless, this large group of people working in smaller establishments should receive more attention than they do now.

I have always believed, and state at every opportunity, that safety is the concern of everyone. In my mind, all health and safety committees should sit at a round table where one can see each other and where the common purpose is to discuss problems and propose solutions to decrease the injury rate.

That has been my experience with safety committees at plant levels. However, in the real world there is confrontation. It is a union right and, I say, a responsibility at union negotiations when contracts are open that safety matters along with other matters that need the attention of management be tabled. This is the place where they should be put on the table in my experience. This was done several times and it really was not a confrontation matter but handled properly by discussion and agreement.

For instance, I refer you to the attached article, appendix A, which was in the Daily Commercial News, 10 January 1990. One of the statements made by the director of the workers' centre says that the slogan "The way that works" of the workers' health and safety centre is, "A direct shot at the safety associations." The director said, "The fight is on."

In my opinion such an attitude will not solve problems facing industries today. Read the article for yourself and form your own opinion as to the value of this thrust of the Ontario Workers Health and Safety Centre. I do not put emphasis on the safety association other than educational, training, counselling and leadership. But it has shown results. By comparison with other provinces and other industries, the Ontario pulp and paper industry is in that position of respect on safety performance and I caution the Minister of Labour that if he is going to make the changes he recommends that he has a basis for checkup of results in a three-year period, so that they can ascertain that the moves he made have been helpful.

My concern is that there is a possibility that morale, attitude and volunteerism that have been demonstrated at the association and general

meetings, where workers, supervisors and management gather and freely discuss problems and exchange information, may suffer from confrontation rather than co-operation. The government is proposing to lump all safety associations into one pot and say that you are all the same and we are going to legislate the same for all of you. Pause a moment and look at the experience of the safety associations over the last 75 years that they have been in existence. You will find that some associations have a much lower frequency than others—pulp and paper is one of those. There are companies and plants that have few injuries as compared to companies and plants with exposure to approximately the same hazards and have nonacceptable results, both in so far as accidents and resultant injuries are concerned.

Has the minister or anyone in his ministry calculated what this new proposed legislation is going to do to costs? My estimation is that it will increase costs considerably. I do not want anybody to be under any misconception. The government of Ontario taxes industry for the costs of all worker injuries, including Workers' Compensation Board administrative costs and it is a cost of doing business. It is all very well to say that when the WCB rates and benefits are raised, that the cost is passed to the customer. Well, you try and pass an increase on in the automobile world in this particular climate or at most times in the world markets where most Canadian exported products are sold.

Sweden, Norway and southern United States, when they sell their pulp and paper, do not raise the world price because Ontario legislates a higher cost for compensation. It is a cost of doing business in Ontario and I think everybody approves. But the government has to be careful that there is some balance in the government costs to exporting industries or they make them uncompetitive and this would have a serious effect on everybody in Ontario because everybody benefits by the results of these resource industries.

I do not think it is good enough to say that the appropriation that WCB makes to the safety associations at this time, and that includes the appropriation of the workers' centre, is transferred to the Ministry of Labour and leave it at that. I suggest you are going to find that these activities under the Minister of Labour are going to cost more money and I think that they should be dealt with in a more realistic manner than simply to say, as the ministry is now saying, "Costs will not increase." Please do not treat every industry alike. The hazards are different. Management

and workforces are different and a broad brush approach to solutions will not achieve desired results.

Several years ago, the WCB held long discussions with the safety associations to try to co-ordinate courses, paperwork, etc. So it was all done by either the health and safety authority or by one association and, therefore, cut down on the costs. It did not work out, as the problems of the safety association are not the same and need separate thinking in many of the problems. Of course, some problems are the same and I think you will find that these have been tackled pretty well to date. However, it does not mean that this area should not be re-examined.

In my submission, I include a letter from the Canadian Paperworkers Union by John R. McInnes, vice-president, dated 27 September 1989, to Dr Robert Elgie to indicate his views on this matter.

I also attach for consideration an extract from a CBQ Northwestern Ontario radio interview, and in this interview the national representative of the Canadian Paperworkers Union, Cec Makowski, reports some opinions that should be of interest to your committee. He also refers to who pays the costs, but then he goes on and states, "A large number of local unions in region 3, which is Ontario and Manitoba and part of Quebec, met in Thunder Bay last week and they decided they would give a directive to the CPU national union to encourage local unions not to participate in training provided by the industry associations... and that directive was voted on and sent to the national union."

I ask you, what great co-operation and interest in a subject that should be considered on a humanitarian basis and not be used as a one-sided argument that management is not doing its job about safety.

Several royal commission reports in the past have examined and made recommendations re the safety associations and in 1987 a special report was commissioned by the Workers' Compensation Board by ARA Consultants and a report issued in three volumes. The report contained 42 recommendations; not one of these recommendations contained any suggestion that representation on the boards of directors should be changed.

The study cost, I have been told, \$350,000 and I just hope that somebody with authority has looked at the recommendations and followed up with action where deemed necessary. I personally doubt that much has happened to this report. It

is probably gathering dust as many other such reports are.

In a recent newspaper article, the president of the Workers' Compensation Board has stated that preliminary figures indicate a reduction in the number of injuries in 1988 has been down five per cent and he wonders why this is so. I think the Workers' Compensation Board deserves some credit for these figures. In the past three or four years it has organized a municipal safety association and while all municipalities do not support the association, nevertheless there has been a marked reduction in municipal injuries in the province of Ontario and this, no doubt, contributed to a reduction in the overall.

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While we have the Canadian Paperworkers Union and the workers' safety centre decrying the efforts of management, I would like to refer to an article from the 28 January 1990 Thunder Bay Times-News, Sunday edition. There was a fatality at the Domtar Packaging mill at Red Rock in April, and this was a shocker because the Red Rock mill has had very, very few injuries. There has been an examination of the fatality, as there is of every injury, and certain recommendations from an inquest and the company employee health and safety committee have been carried out. These measures have been taken to prevent such an incident from happening again.

The Domtar Packaging Red Rock mill has a very enviable safety reputation. In this particular instance, Milan Spoljarich, chairman of the union council, said safety is a high priority at Domtar. He said in an interview that all accidents and near accidents are immediately investigated by safety officials.

The occupational health and safety committee, which has representatives from all five unions that work at Domtar and five voting management members, is active. Its mandate is to make recommendations to the mill manager. Safety stewards are also active, he said, and are available at all times. Mr Spoljarich said, "Safety is an ongoing process." That is from a worker member of the health and safety committee.

Recently, 8, 9 and 10 January 1990, at the occupational health and safety resource centre in Thunder Bay, affiliated with Lakehead University, a course was held Developing an Effective Health and Safety Committee. Sixteen in number from the pulp and paper industry in northwestern Ontario attended this course, comprising equal numbers of workers and management. From the initial reports, it was an unqualified success and future courses are planned. The northwestern

mill managers should be highly commended on this initiative. This course brings the subject of health and safety committees right into the plant by having a management and worker representative there. This is an excellent move on the part of the northwestern Ontario mill managers who developed the course with the occupational health and safety resource centre. More should be held.

Now I give the minister full marks for attempting to make some progress and ensure that there is not complacency in the work sites of Ontario. Thus, on the basis of my interpretation of Bill 208 and the minister's recommendations, I give you my recommendations.

1. I recommend that the resources development committee and Parliament examine carefully the changes of responsibility recommended in Bill 208. Transferring responsibility from the WCB to the Ministry of Labour, whose representatives act as inspectors, enforcers and policemen, I question. The number one need is to enhance and improve morale and attitudes at plants, and the WCB administration has resulted in improvements in the last few years. When Bill 208 is finally passed, the benefits visioned from the move should be put on paper as they are envisioned so that the results of this change of responsibility may be examined in due course.

2. That the minister look carefully at the history of management by consensus. Whatever changes he decides to make at the association or board of directors level, I am sure that such changes will be given a fair trial by both managers and workers alike. I do strongly recommend that he announces a date at which the new bill will be reviewed—I suggest three years—to see if the results have improved so that we just do not go on and on, on a new thrust without a checkup.

3. That first aid training be more emphasized; the training agencies in Ontario be given proper funding so that the training of first aid by immersion—that means everybody—in the plants be carried out on a regular basis because anyone trained in first aid is a more safe worker and that has been proven.

A word about first aid. I have recommended in Dryden that the high school and the public school teach first aid in the schools. Your committee might consider that recommendation, because if we are going to start pecking away at the high costs of health and the health plan and so on, we have to reduce injuries right in industry, road and home, and a first aid trained person is one of the things that is going to help reduce as we go on.

4. That the broad-brush approach to solutions to problems in the different associations be examined. Whether we like it or not industries are different and hazards are different, workforces are different, and one solution will not cover the many problems of safe workmanship.

5. It is very apparent to me that the minister seems to think equal representation of management and workers will produce better results. If this is so in the safety associations, it should be so in the Canadian workers' centre and, therefore, this regulation, if passed or amended, should apply across the board.

Gentleman, there from an old man who should know better than to sit here and address you, are some thoughts from a kid in the sticks. I pass them to you. I may have exceeded my time by two minutes, Mr Chairman.

The Chair: It is all right, Mr Jones. We appreciate you coming here. Just one thing I want to assure you about, and Nick Chasoway will correct me if I am wrong, that the tripartite committee in the pulp and paper industry has completed its report.

Mr Jones: Has it been announced, Nick?

Mr Chasoway: No. It will not be announced until the minister Gerry Phillips sees it. They have held it back. But just one little other point of information was, the holdup in that committee was on one part of one recommendation out of approximately 30. So it was not a major dispute but just one point of it, and the clarification was concerning Workers' Health and Safety Centre and the other safety association.

Mr Jones: I appreciate that information because here in Dryden you do not get all the information you get down east and so on. But my point is, if you will just look back at when that committee was appointed; and here we are now on 20 February and still no report. Any other questions?

Mr Chasoway: One more point of information was, that committee's mandate was for six months. So the end of December was the mandate anyway.

The extension would have been 24 days, but because of the time and everything it had to be extended into February. As far as the March date, that is only for the signing part of it. So the work was completed approximately one month after the mandate, which was actually good for looking at 62 mills or the 62 mills we should have looked at.

The Chair: That may be a world record.

Mr Chasoway: We only spent 31 days on it. That is not too bad, I do not think.

Mr Jones: Mr Chairman, I think that will be a most important report.

The Chair: Yes. I am sure we would all like to look forward to that too. Mr Jones, we are out of time indeed, but I thank you very much for your taking the time to come before the committee.

FORD MOTOR CO OF CANADA LTD

The Chair: The final presentation of the afternoon is from the Ford Motor Co. You did not know they had a big assembly plant in Dryden, did you?

Gentlemen, we welcome you to Dryden and to the committee this afternoon and we look forward to your comments for the next 30 minutes.

Mr MacLean: Thank you very much. Good afternoon. My name is Max MacLean. I am the labour relations and hourly personnel manager for the Ford Motor Co of Canada Ltd. With me today is Bruce Waechter who is the labour relations planning manager for the company and whose primary responsibilities include the development and implementation of the Ford Motor Co of Canada's health and safety programs.

Ford of Canada employs approximately 14,800 salaried and hourly people in the province of Ontario in the manufacture, assembly and sales of automobiles, trucks and related products. Ford of Canada welcomes the opportunity to appear before the standing committee to share our perspectives with respect to Bill 208.

Our primary concern with the proposed legislation involves the employee's right-to-refuse provisions as they apply to the individual and to the certified worker concept. There have been ongoing problems with the right-to-refuse provisions since the Occupational Health and Safety Act became law 10 years ago. We have utilized every opportunity made available to us to attempt to raise the level of awareness regarding this concern, but we have not been successful. I will attempt to do that again today as it is our position that the proposed changes will significantly increase these problems.

Ford Motor Co of Canada Ltd considers itself to be a leader in the field of health and safety. The binders that we have passed out today contain information related to our joint Ford-Canadian Auto Workers health and safety programs. Each of the programs contained in the binder represents a major training commitment involving significant numbers of employees, trained during working hours while receiving their normal

compensation, utilizing a combination of employee trainers trained to perform that task, as well as outside professional trainers.

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These programs are incremental to the more traditional health and safety programs and promotions that are ongoing in our plants, such as individual safety talks and specific equipment safety awareness training. Other programs are outlined in our letter to the CAW, which is located at tab 2 in the binder. These programs and their application, briefly stated, are as follows.

In tab 3 of the binder is the 40-hour skilled trades health and safety training program applicable to 1,500 skilled trades employees and their supervisors and which is ongoing.

Tab 4 in the binder is the hazard training program which commenced prior to the workplace hazardous materials information system legislation and which has provided 8 to 16 hours of training for all employees and is also ongoing.

Tab 5 is an energy control/power lockout program which provides eight hours of training for approximately 5,000 employees having the need to lock out power equipment.

Tab 6 is a 40-hour ergonomic process training program for our plant health and safety and ergonomic committees. This program provides a process for ergonomics committees to identify and resolve plant ergonomics issues.

Tab 7 is a powered material-handling vehicle safety program which provides one-hour pedestrian training for all plant employees and an additional four to seven hours for employees who utilize powered equipment.

Tab 8 is a summary of our annual 40-hour health and safety committee training conducted since 1984.

Tab 9 is a copy of our operating procedure for contractors who are required to provide a safety co-ordinator to work on safety issues at the job site on all major contracts.

Tab 10 is a description of the basic problem-solving system or process used throughout the Ford Motor Co which has been adapted for accident prevention and investigation.

Tab 11 is a copy of our body and assembly division plant and division safety audit program developed for use in the plants.

I would ask that you review this material, and I am sure you will agree that a major commitment has been made to increase safety awareness and safety concerns. Please note that a lot of effort has been directed to process. By "process," I mean an orderly system involving knowledgeable people to identify and resolve problems in

order to minimize the crisis situation or surprises to the greatest extent possible. This ingredient is essential in the automotive assembly plant process, where one weak link in the chain can bring the entire plant to a stop.

In the interest of having sufficient time to discuss our primary issue, I would simply say that the Ford Motor Co of Canada Ltd endorses generally those submissions made to this committee by the Canadian Manufacturers' Association, the Motor Vehicle Manufacturers' Association, Chrysler Canada and General Motors of Canada. The views and recommendations contained in those proposals reflect our views and recommendations as well. I would, however, like to itemize our primary concerns with the proposed legislation.

Size of committees: We oppose increasing the size of committees in the auto industry. Ford of Canada manufacturing and assembly operations have full-time, company-paid union health and safety representatives. These union health and safety representatives have duties, responsibilities and privileges exceeding the act. The company and union have negotiated that these full-time representatives and plant safety engineers will be the committee under the act. There is no demonstrated need for the committee to be larger than one and one where there are full-time union health and safety representatives or when the numbers on the committee have been negotiated by the parties.

Medical surveillance program: The Ford Motor Co is opposed to the proposal that makes the employees' participation in such a program voluntary. Employees must be required to participate in legitimate medical surveillance programs that are designed to protect both the employee and the employer.

Health and safety agency: Ford of Canada does not support the agency concept as it has been proposed. The agency, if instituted, must be representative of all members of the Ontario business and labour workforce and should be comprised of only health and safety professionals acting on an advisory basis to the minister. It should operate on a consensus basis with a nonvoting chairperson. It should ensure that existing training programs receive recognition as part of the accreditation program for the health and safety committee members and not impose arbitrary training programs whose focus may be incompatible or inappropriate in a particular workplace.

Certification: Ford of Canada supports certification of the joint health and safety committee

representatives to the extent that the certified standards are consistent with individual industry needs and give recognition to programs already in place. We are opposed to the proposals that would give the certified representative the unilateral right to stop work in the absence of a clear definition of what constitutes immediate risk or a provision for sanctions applicable in cases of misuse.

Work activity: Ford of Canada is opposed to expanding the right-to-refuse provision to include a work activity. We acknowledge that the issue of work activity as it relates to ergonomics is an increasing concern and we have initiated a process to reduce repetitive motion injuries. The proposed legislation will significantly increase the potential for unfounded work refusals.

As I stated earlier, Ford of Canada believes that an orderly process is essential to effective problem-solving of all types, and health and safety is no exception. In fact, it is even more essential to ensure an objective evaluation is made of all the factors of a particular issue by professionals technically qualified to make judgements with respect to the sophisticated equipment utilized in industry today. The internal responsibility system, when it functions properly, provides this process. It is our belief that the process could be strengthened significantly by amending the proposals to require that all health and safety concerns be raised initially under section 17 of the act and pursued to the health and safety committee if not addressed expeditiously by management. Section 23 of the act should be reserved for circumstances involving immediate risk. Ford of Canada believes that health and safety issues can and will be addressed once identified and defined, and we have committed significant resources to ensure that that objective is satisfied.

Despite its value, however, there are certain elements of the internal responsibility system which inhibit its effectiveness. To be effective, the parties—management and labour and the individuals directly involved in the process—must establish a level of trust, mutual respect and accountability. Despite our continued efforts to develop such a culture since 1973, the fundamental differences in the agendas of the parties make it extremely difficult to achieve the harmony envisioned by the legislation. Labour and management are not partners. The relationship is adversarial, and it will continue to be such.

We have had a formal working relationship with our union health and safety representatives since 1973, and that relationship has evolved into

the health and safety committees embodied in the existing legislation. You would expect that such a mature relationship would be yielding extremely positive results, particularly considering our extensive training commitment. Our health and safety work refusals in our three major assembly plants would indicate, however, there are serious problems. Those data are included under tab 12 in the binder.

In 1986 we had 242 incidents, 227 of which were resolved with no Ministry of Labour involvement, and we lost 2,513 production units. In 1987 we had 292 incidents, of which 263, or 90 per cent, were resolved without Ministry of Labour involvement, and we lost 2,768 units. In 1988 we had 454 incidents, of which 422, or 93 per cent, were resolved without Ministry of Labour involvement, and we lost 8,447 units. In 1989 we had 377 incidents, of which 360, or 95 per cent, were resolved without Ministry of Labour involvement. We lost 4,817 units.

During this four-year period, we have experienced 1,365 incidents, resulting in 18,545 lost units. I should point out that, during this period, these assembly plants were operating, for the most part, at full capacity on full overtime schedules, and consequently the majority of these units were not recoverable. They represent an economic loss to the North American economy of approximately \$274.5 million, based on the average dealer wholesale billing for the products assembled.

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Further analysis of the incidents at one of our assembly plants during 1989 reveals the following. During the year, there were 221 work refusals. These 221 refusals represent over twice as many as the other two major plants combined. Sixty-six, or 30 per cent, occurred on one shift of the two production shifts, while 155, or 70 per cent, occurred on the other production shift. During the last six weeks of 1989, which was the plant's work rebalance period, 84, or 38 per cent, of the 221 work refusals for the entire year were experienced. Of these 84 refusals, 33, or 39 per cent, occurred on one operating shift, while 51, or 61 per cent, occurred on the other operating shift. In addition, 30, or 35 per cent, of the 84 refusals during this period were related to ergonomic or work activities which are not covered under current legislation.

It should be noted that during the rebalance period, existing work is reassigned from one employee to another as part of the efficiency changes. In most cases, it represents work that has been performed without incident by another

employee. The significant differences between shifts are difficult to explain, considering that they occur in the same physical work environment, under the auspices of the same health and safety committee, under the direction of the same plant management, building the same product with the identical job structure. The ergonomic issues are particularly concerning inasmuch as this plant has a fully qualified ergonomist on staff who is a member of the local ergonomics committee. For the record, in the past three years, 260 ergonomic issues have been addressed by the committee at this plant.

Statistics of this nature invariably generate more questions than they answer. None the less, if nothing else, they clearly indicate that a problem exists which will undoubtedly become worse if the proposed amendments become law. The Ford Motor Co of Canada is committed to health and safety. Our programs and our involvement with our union confirm it. We strongly endorse the internal responsibility system. We submit, however, that the current and proposed systems fail to recognize the key elements in the workplace. The first is the presence of the so-called fringe player. They are present in our plants, as they are in society generally. They abuse the rights and privileges bestowed upon them. In society, they are subject to sanctions created in law to restrict aberrant behaviour. There are no such sanctions contained in the existing or proposed legislation.

Second, as I outlined earlier, labour and management are not partners; rather, they are adversaries. In many instances, union health and safety representatives are elected and consequently they bring their local union agendas with them to the internal responsibility system. When unrelated issues find their way into the process, as they invariably do, they create conflict and win-lose situations that are significantly detrimental to advancing the cause of health and safety in the workplace.

Again, a requirement in the legislation to pursue health and safety concerns under section 17 to the health and safety committee while reserving the right to refuse under section 23 to situations of immediate risk would strengthen the internal responsibility system, eliminate conflict and minimize the disruptive effect of the work refusals. The clear definition of an orderly process will strengthen the internal responsibility system and allow the health and safety committees to devote attention to legitimate health and safety matters.

I might comment that organized labour has repeatedly stated in these hearings that the right to refuse has not been abused. While I do not agree with their views, it could be concluded that they should have no reservations with an amendment to provide for sanctions applicable to those who abuse their right to refuse under this legislation.

The automotive assembly plant is a unique, integrated, complex process. It may be that our problems are unique. None the less, they are problems, and I would like to take this opportunity to extend an invitation to you, Mr Chairman, and members of your committee, to visit one of our assembly plants at your convenience to fully understand the process. Thank you.

The Chair: Thank you very much for your presentation and for your invitation. We have a substantial number of members who would like to have an exchange with you.

Mr Callahan: If the employees exercise the right they have now to refuse work and stop work, are they paid?

Mr MacLean: Yes.

Mr Callahan: I am talking about all the other employees who may be prevented from working. Are they paid?

Mr MacLean: Yes.

Mr Callahan: Is that because there is something unusual in Ford's policy, or is that part of the collective agreement or what? Because we have heard in some instances that that is not the case. The individuals themselves would not be paid during a work stoppage.

Mr MacLean: Our practice has been, since the act first became law, that while the right-to-refuse procedure is going on in one of the plants, which may shut down the assembly line and which may idle a number of people, who are standing there while the investigation is being conducted—we have continued to pay those people until such time as a ruling has been made by the Ministry of Labour inspector who is called to the plant.

Mr Callahan: Okay. You support the immediate danger, nothing more than that. You do not support somebody coming along and seeing the potential danger that is not an immediate danger.

Mr MacLean: I think the potential danger can be adequately handled under the health and safety committee.

Mr Callahan: That is assuming they pick it up. I am thinking of an instance of an employee who might go out to drive a bus and perhaps as he

puts his foot down on the brake, the brakes are a little mushy. That is not an immediate hazard, because the mushiness could be any number of things. If he were required to drive that bus, it may result in an immediate hazard when he is out there and the brakes fail. He is at risk and so is everybody else on the road. That is my concern.

Mr MacLean: If I was that employee, I would take that concern up with my supervisor, who I hope would investigate it and resolve the issue. That is what I think the internal responsibility is supposed to do. There should be that byplay between the employee and his immediate supervisor, recognizing that all the concerns are not always going to be addressed as quickly and as expeditiously as we might think. Where there are delays that the employee does not feel are appropriate, then he should pursue it with the health and safety committee.

Mr Callahan: Would you consider—you are a pretty large company in this province and in this country and I know that you have told us your policy is different from most companies' policies—a tradeoff between, if a certified worker were to capriciously refuse work and stop work, that that decision as to whether it was capricious or not would be reviewed by the agency that is under the act, and if it determined that it was capricious, then he would have to suffer the outrages of his fellow employees, since under the normal situation they were not being paid?

Equally, on the other side of the coin—industries that do not follow your policy—if it turned out that the certified management person was not yielding to what was an obvious danger and required workers to continue to work, if it was found by the agency that that was the case, the employer would in fact be penalized by having to pay all of the employees their wages during the work shutdown. Recognizing you already pay your employees when that happens, can you see that as a possible way of having the two parties give a little greater thought to the question of management side, whether they should yield to fixing something that may not be obviously or immediately hazardous lest they run the risk of the penalties I have just suggested.

There is actually a great danger and a great issue here, it seems to me, that management, on the whole, thinks that if the workers are given this right, they will misuse it, and you have already said that you have seen this happening. On the other side of the coin, we have labour saying that there are employers who in fact put them into situations where they are going to be injured. I think the statistics that we have seen are

actually outrageous, the deaths and the injuries, and there has to be some fact in what they said in that regard.

Mr Waechter: I would just add one thing to what you have said: I think the situation is unique. The auto industry is a unique environment, particularly in the assembly line. Management health and safety or safety engineers do shut down the assembly line if there is immediate risk. We have concerns with giving the individual health and safety rep the right to shut down operations, because as has been stated in our brief, we do operate in a political environment, and in some locations that political environment is on their agenda. There are elections in some locations every two years. In the auto industry we do not see the need for a certified rep.

The Chair: Could we move to give other members an opportunity, Mr Callahan? Thank you.

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Mr Mackenzie: I am curious, when you take the position that you do not agree that the right will not be abused—and labour has made the argument that it will not abuse it—I am wondering if you are aware, even in these hearings, that a substantial number of managements, including some big firms, have also made the same claim, that there is no proof that workers will abuse this right.

Indeed, right before me is a brief we received just the other day from Ontario Hydro's management side. "All kinds of assumptions were made by the doomsayers that all work would stop and the province's production would suffer. That simply has not happened. We have had some work refusals at Ontario Hydro for activities that were unsafe, and in most of those situations the employees were right. Major work stoppages, however, never materialized."

I happen to know that Hydro and Local 1000 have been in a political situation for many years as well. It is not just the automobile plants. I am just wondering what your reaction is to the number who say this from the management side, never mind the union side.

Mr MacLean: I heard your references this morning. There was the Hydro example and, I think, Inco was the other example you talked about this morning. I do not really disagree with some of that. The fact of the matter, as we said in the brief, is that the key ingredient is the trust and integrity of the relationship, and with the right mix of people, as have in some of our plants, the thing is fantastic.

Mr Mackenzie: But you are saying essentially you do not have the right mix then with the Canadian Auto Workers. Is that what you are saying?

Mr MacLean: I am not saying that is the case in every instance at all. It really boils down to the people who are involved in it and what motivates them. If they are conscientious and dedicated and truly interested in the objectives of health and safety, then they work extremely well together. It is when the external factors get into the equation that it becomes very disruptive; in those conflict situations. I have been there and they are not pleasant.

Mr Waechter: I was going to say, just to add to that, that when we look at the work refusals we are experiencing and at the procedures and the process and the numbers, we come up with something like 55 per cent where the issue was not raised under section 17, reporting the incident to the supervisor and resolving it in that arena, and it switches over to becoming immediately a work refusal under section 23.

Mr Mackenzie: The difficulty with a chart such as yours is that the figures here may be accurate, but they do not seem to indicate quite the concern you say. Just take this last year, for example: You have 377 incidents, of which 360 were resolved without the Ministry of Labour. How do we know with those 360 whether or not there was a legitimate reason for that? They were resolved internally, so there was some problem that caused them, and yet between the two parties you managed to reach agreement. You called in the Ministry of Labour in only 17 cases. How were those 17 cases resolved? Were any of them legitimate? Were any of them not legitimate? It does not seem like a very high number. When it comes to the units lost, I guess a question I have as well, because it certainly surfaced at General Motors, is how many units would be lost because of quality control stoppages as well.

Mr MacLean: Let me answer your first question first. The right to refuse is a very subjective matter and I cannot impose my judgement on the individual's judgement. Whether there was some legitimacy to it or not is subject to debate and it always will be with the way the legislation is set up.

Mr Mackenzie: Obviously the incident would not have been there—they are not high that had to go to the Ministry of Labour.

Mr MacLean: Absolutely not.

Mr Mackenzie: It may be that every one of those 17 were legitimate.

Mr MacLean: Absolutely not. We say in our brief that we can and we will and we intend to address the issues that are raised and we do that. As I am sure you appreciate, the dollar figure starts racking up very quickly when those assembly lines go down. We make a lot of decisions. They may not all be good decisions, but we make a lot of decisions.

Mr Mackenzie: It still has not answered my basic question on how many of these may have been legitimate or not in the deal.

Mr MacLean: I could take a guess, but I would only be guessing. I would not want to mislead anybody by doing that. I know I have been in a plant where I have been involved in these things where in my judgement there was no legitimacy whatsoever.

Mr Mackenzie: Have you been there when there was legitimacy?

Mr MacLean: Yes, I have; no question about it.

Mr Wiseman: During the last four or five weeks we have heard a lot about training and one thing and another. Where you go down all the different ones that you train, some of them as much as 40 hours, is there anyone in the plant who would not be trained in some sort of safety?

How long ago did you start that, because I see by your chart on 12 that even with all the training you give these people—that is what we have heard, that people should be trained better and that if they were trained better and if they have the representatives and the whole bit, then we would see accidents go down or we would see better working relationships between management and labour. I know there was a bigger one in 1988, more people incidents, but there has been a gradual buildup, just the opposite to what we have been hearing, as far as I know, in a lot of briefs, where they have said if you give the employees proper training, give them the reps, they will be able to work things out with management and we will see a decline. It seems to be the opposite in your case, where I think you have outlined where you have done a good job in your training program.

In one of the places they mentioned that they wanted to be paid if they were off, if somebody stopped the line, and they were paid for that. You have already covered that, that you do that. I guess I am amiss to know, although we have heard that your experiences are not better than they are with the labour relations and the accident rate and so on.

Mr Waechter: The joint training programs really started in 1985 and that is when we did the 40-hour health and safety training program for all the skilled trades employees, which included 40 hours of classroom training. Following that, 1986 is when we got into our hazard training program which really was the forerunner to the workplace hazardous materials information system and we have been doing 8 to 16 hours of hazardous chemical training, and that includes a module on the Occupational Health and Safety Act, including the right-to-refuse provisions.

The energy control-power lockout program in 1987 is eight hours, eight one-hour modules to every employee who has a need to lock out powered equipment. There again they were delivered by joint trainers, a supervisor and a skilled trades employee, to increase the awareness. We were running at probably 50 per cent of the people, 50 per cent of the employees who knew about lockout but were not locking out 100 per cent of the time. This program has increased the awareness and the use of it to about 90 per cent, but we still have 10 per cent of the people who have been through the training but are not locking out all the time.

The Chair: Mr Wiseman, I am sorry to break in here, but I wonder if you would let Mr Carrothers in. I think these gentlemen are his constituents. I think it would be only fair to allow him to ask a question.

Mr Wiseman: Yes, I will just be a second. I think you sum up what we have been hearing for four or five weeks. You can see the seriousness of our job that we have to do in clause-by-clause. I had thought that if we gave more training and everything and gave worker reps and one thing and another, you would see a decline, and that is not the case. Unless you get the co-operation between management and the unions, you are never going to achieve anything.

Mr MacLean: It is a very fragile relationship.

Mr Waechter: When we talk about injuries and that sort of thing, I have to talk about the ergonomics process because we do have joint ergonomics committees in each of our plant locations. We do know from statistics that approximately 60 per cent of our injuries and lost time are sprains and strains and that sort of thing. This process, this program for committees was set up to provide them with a process procedure that set out to identify and recommend changes.

Mr Carrothers: I want to go back to your list of numbers on pages 8 and 9 of the brief. I guess the implication of the numbers that you want to

leave with us is that the distribution of work refusals is skewed to one shift of a particular plant and also seems to be skewed to a particular time of one year.

I am wondering if you could give us a better understanding of what is going on. Could you give us an idea of what types of incidents people were refusing, what situations the refusals took place in and also whether any changes were made to your lines or anything in order to accommodate that. Were any major changes made—I am assuming it is the St Thomas plant by the statistics—to that assembly line as a result of any of this?

Mr MacLean: I cannot get into the detailed specifics today, no.

Mr Carrothers: You would not have any sort of anecdotal from your own memory just to give a better sense.

Mr MacLean: No. I am not there on a daily basis. All that stuff was going on and we were on the end of a telephone call from a lot of anxious people in the United States wanting to know why the St Thomas assembly plant was having all these problems. You look at numbers. The one number that we did not include there was the fact that within the same zone in one of the plants, on one shift there was one refusal; on the other shift there were 15. I can only draw conclusions from that.

Mr Carrothers: No major changes were made to the assembly line so others would have gone back in to do the task afterwards, I guess.

Mr MacLean: We would have addressed in some way whatever the issue was that the individual had raised. I cannot tell you specifically what it was.

Mr Waechter: Further to that, there are examples of the types of work refusals that we run into under section 12 on three pages.

Mr Carrothers: Oh, I see, later on.

Mr MacLean: They are sort of examples. This is such a subjective thing, but they are examples where we feel the issue could have very adequately been handled under section 17.

Mr Carrothers: Just as one final question, was there any sort of thing going on at the plant that might have coincided with this? I ask that question because, I guess, the Oakville plant seems to have had a much lower rate of work refusal and yet in 1988 there seems to have been a blip, although that, I think, co-ordinated to a model year change. I am wondering if something like that was happening in St Thomas.

Mr MacLean: During the last two months of the year, as I indicated in the brief, that was the rebalance period and you go through the efficiency thing and a lot of jobs change and there is resistance to change as we all know. Aside from that, no, there is nothing different.

The Chair: Mr Waechter, Mr MacLean, we thank you for coming to Dryden and making a presentation to the committee.

Mr MacLean: I appreciate the opportunity. I might never otherwise have got to Dryden.

The Chair: There you go.

Mr MacLean: I am glad I came.

Mr Campbell: Go talk to the mayor.

The Chair: Go tell the mayor why you came here.

Mr MacLean: Sincerely, if anybody would like to take us up on our invitation we would only be too happy to tour you around one of the assembly plants if you have never been in one. It certainly would help you with a better perspective on the kinds of things that we have going on there.

The Chair: This brings to a conclusion the public hearings process concerning Bill 208. Tomorrow afternoon we begin the rest of the process, namely, the clause-by-clause part of it.

We have heard a great deal over the last month and I think we have learned a lot over the last month. We will see what transpires during the clause-by-clause part. In anticipation of that, a research person, Lorraine Luski, here on my left, has done a very nice summary of all the recommendations and they will all be before the committee. Every time we come to a clause there will be a summary of all the recommendations that had anything to do with that particular clause. I am looking forward to that.

Mr Dietsch: Mr Chairman, I am sure I speak on behalf of the whole committee when I express our appreciation for the way in which you have conducted some meetings that it was very difficult to deal with. I think the public process has been an opportunity to hear from a great number of people around the province and I congratulate you on the fairness with which you have handled the neutral chair.

The Chair: I appreciate those comments. Thank you very much. We are now adjourned. The cabs will be out front at 4:30 to take us to the airport and we are adjourned until two o'clock tomorrow afternoon.

The committee adjourned at 1613.

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Publication

No. R-19 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on Resources Development

Occupational Health and Safety Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Wednesday 21 February 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday 21 February 1990

The committee met at 1411 in committee room 2.

OCCUPATIONAL HEALTH AND SAFETY STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Chair: The standing committee on resources development will come to order. As most people in this room know, we have completed the public hearing part of the examination of Bill 208. We have heard some truly fascinating briefs and opinions during our travels, but we have reached the clause-by-clause stage of the process now.

Today, it has been agreed by the committee, so everyone understands, that the minister will make an opening statement concerning the amendments and has already tabled with the committee his proposed amendments.

At the conclusion of the minister's remarks, there will be an opportunity for the two opposition critics to make a statement and respond to the minister's comments. They may at that time table their amendments, or they may wish to wait until tomorrow morning to table their amendments.

At that point we will adjourn, and we will not begin the examination of each clause until tomorrow morning. That was already agreed to by the members of the committee, so there is no change in that regard, just so everyone understands the process.

Minister, we welcome you here today and we turn this part of the meeting over to you.

Hon Mr Phillips: Thank you. I believe an issue was raised yesterday in Dryden and I think the committee asked the ministry to look into it. I thought we might start with that, if that would be helpful, and then go into my remarks.

The Chair: Yes, and perhaps you could introduce the gentlemen with you. Even though most of us know them, there may be some who do not.

Hon Mr Phillips: On my immediate left is the Deputy Minister of Labour, George Thomson, and on his left is the assistant deputy minister,

Tim Millard, who handles the whole area of occupational health and safety.

If it is the committee's wish, perhaps we could start off with that issue, and then get into my remarks. I have asked Tim Millard, as the individual who was involved in his area, to comment on it.

Mr Millard: Thank you. As I understand the concern that was expressed, it was that one of our inspectors, Ken Armstrong, who had appeared before your committee with a delegation of three inspectors to comment on Bill 208—there was some concern expressed that perhaps he had in fact suffered—I do not know whether the word "harassment" was used, but none the less that he was concerned that he in some fashion was being harassed and some discipline was being intimated as a result of his having appeared before the hearing.

I would like to categorically state that there has been no intent, no will and I think no expression of intimidation with respect to Mr Armstrong. On Wednesday 14 February, Mr Armstrong was invited by the Ontario Public Service Employees Union to participate in the OPSEU brief to the committee, and he advised his acting manager, Gary Jones.

On Monday 19 February of this year, Walter Melinyshyn, the director of our construction health and safety branch, became aware of the comments by virtue of an article in the Toronto Star, I believe. Mr Melinyshyn had not been informed by the acting manager that Mr Armstrong was going to appear before you. Mr Melinyshyn, in the course of trying to prepare any notes for any subsequent calls that might come to him or to any of us with respect to comments by the inspector, had an individual who exercises no supervisory role with respect to Mr Armstrong contact him. He was asked the context in which the comments had been made, what the authorization was with respect to that appearance, and they discussed the various points raised. I am assured that there was absolutely and categorically no intent and no expression of any possible discipline with respect to these remarks.

I hope, Mr Chairman, you will recall—I think it was you who chaired the standing committee when we were looking at the mining industry in

this province just a year and a half ago—that you asked for our inspectors to be able to appear before you to give their testimony and their evidence before committee. I hope you will agree that we willingly obliged, and in fact allowed you to choose which inspectors should appear. I can tell you that at that time and certainly at this time, there was absolutely no coaching of those people with respect to what they were to say and there was no badgering of them with respect to what they were going to say.

Mr Giasson, an inspector who I have a close relationship with because we have acted as co-chairmen of our corporate joint health and safety committee, approached me some time ago to let me know that he was appearing before the committee. I thanked him very much for apprising me of that and gave him no further instruction with respect to his presentation before the committee.

So if there was any concern on the part of Mr Armstrong that he was in fact being harassed as a result of this, I will be happy to personally undertake calling Mr Armstrong to disabuse anyone of the notion that there was any discipline intended. That was not the intent, and, from the information I got through my investigation, I think there was no expression of that.

The Chair: Perhaps we should deal with this very briefly now and move on to the minister's statement. Did you wish to respond to that, Mr Mackenzie? Mr Mackenzie was the one who raised it yesterday.

Mr Mackenzie: Yes, I will. I was not party to talking to the inspector himself, or the other case that was raised with us as well, but Mr Millard has to some extent verified what went on. I would have some difficulty accepting that it was not necessarily intimidation.

What I reported to the committee was the report from the health and safety director of OPSEU, that the employee, Mr Armstrong, had been contacted, had been told—it was Mr Melinyshyn who had instituted it—that there was an investigation being done. The specific questions asked were: Who authorized it? Was he paid? What were some of the comments he made before the committee?

If I were that employee, I would certainly have taken it as some intimidation, especially when it was coming from the construction health and safety branch director as well. I do not know how you tell us that clearly there is no concern about that kind of an approach. I would have been concerned if I was approached that way.

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Mr Wiseman: I just wonder, when we are on the subject, I asked that we get a similar statement from the Ministry of Transportation on its employee who was supposed to have been treated in the same manner. I wondered if the clerk or you, as chairman, had received anything from that ministry.

The Chair: No. The request was put yesterday. I thought quite clearly that in both cases there would be a report back to the committee.

Hon Mr Phillips: We will have to get the other one. It was the Ministry of Labour one that I was looking into.

Mr Mackenzie: I think the second one was put. It was the same information that they had called in to the union. It was one of the employees, at the Ministry of Transportation in this case, who appeared before this committee in the Sault and made a presentation, during which, if I remember correctly, he did raise some of the difficulties in receiving proper health and safety training.

Following his presentation before our committee in the Sault, he was contacted by supervision and questions were asked as to the comments he had made before the committee. At that time he had a scholarship, and he had had trouble previously, and was told that he would not be given the time to attend the health and safety course, the course. The reason given was they needed him for snowplowing, which is either none or a very small part of his job. That is the report that came to us and it is on the basis of those two bits of information and request that we look into it that I raised that point of privilege yesterday.

The Chair: I think it is safe to say that the committee was unanimous in its concern about this happening too, so we would appreciate a report back on that.

Mrs Marland: I was not at the committee yesterday when this was raised, obviously, but I just want to ask a very simple question: Why was a phone call made to the staff person at all?

Hon Mr Phillips: I hope it goes without saying, but I will say, as the assistant deputy said, that the last thing on our minds would ever be to leave anyone with the impression that he was not free to speak his mind. I gather what happened was an article appeared in the paper and someone felt there was the need to get the background information. The person who made the phone call had, as I think the assistant deputy minister said, no supervisory role in it and

phoned to get what he regarded as the background information.

I guess the problem is that an individual can interpret that as going beyond just getting information. As the assistant deputy minister said, if anyone took that interpretation, it was not the interpretation that was meant and he will undertake to reassure that particular individual. Based on everything I know about it, the call was designed to elicit merely the background information, because the person who instituted the need to gather the information was not aware that the person was appearing before the committee.

Mrs Marland: They could have got the same information from Hansard. I would suggest that would have been a smarter thing to do.

The Chair: Can we then expect a further report back on these two incidents, particularly from the Ministry of Transportation?

Hon Mr Phillips: Yes, we will undertake to do that. My apologies. I just was not aware of the Transportation one.

The Chair: Can we move on to the minister's statement on Bill 208?

Hon Mr Phillips: I am pleased to be here and grateful for the opportunity to address the committee as it begins its clause-by-clause study of Bill 208. As members know, greater protection against workplace injury and illness is a major priority of the government. In 1988, more than 300 men and women died due to work-related incidents, whether it be an accident or an occupational illness.

Last year, our workers' compensation system paid out over \$1.5 billion in benefits to thousands of workers who became incapacitated due to work-related causes. The human suffering and the negative economic impact that these figures reflect are simply, as all of us agree, unacceptable in the 1990s here in Ontario. We can do better, and Bill 208 is a means by which we will do better.

Bill 208 will amend the Occupational Health and Safety Act. These amendments will do far more than merely update existing legislation. Bill 208 will have a direct impact on almost every working person in Ontario. The bill will make our workplaces safer. It will involve—

Mr Wiseman: Is there a copy of the statement?

The Chair: There is a printed statement in the kits that members should have.

Mr Wildman: These kits were distributed to the press but not to the committee.

The Chair: Is the statement that is in here the same one that the minister is reading now?

Hon Mr Phillips: No. I have a longer statement.

Mrs Marland: Could we wait until we get the copy?

Interjection: There are copies on the way.

The Chair: Okay. Is it agreeable to members that we proceed and we will get the copies here?

Mrs Marland: I would prefer to wait so I can follow what the minister is saying, especially if we are going to be asked to respond. It is very difficult if you do not have it in front of you, and I am insulted, frankly, that the media have it and we do not.

Hon Mr Phillips: No, the media do not have it.

The Chair: There are two different statements. The media had one of these kits that has an abbreviated statement in it that does not deal with all the specific amendments.

Mr Delaunay: They have both statements.

The Chair: Oh, they do?

Mr Delaunay: Yes.

Mrs Marland: The media have both statements?

Mr Delaunay: Yes.

The Chair: I am sorry. I do not understand that.

Interjection: The media do not have both statements.

The Chair: I am told that the media do not have the statement that the minister is about to make now.

Mrs Marland: Do the Liberal members have a copy of the minister's statement? No.

Hon Mr Phillips: As you know, the committee was meeting until last night and we were literally working on this overnight. Whenever we schedule meetings this close, it makes it a bit challenging.

The Chair: Before we go on, can we get an indication from the ministry staff how long it will be before there are copies of the statement?

Mr Wildman: Mr Chairman, whatever the intention, the fact is that a member of the audience here, who was in attendance at the press conference in the media studio, indeed does have in his hand a copy of the minister's statement that he is reading from now, from which he addresses the chair.

Hon Mr Phillips: As I say, the challenge is that when the committee meets as close as it does

to this, it is sometimes difficult to get all the material easily co-ordinated.

The Chair: Since members have indicated that they do not want to proceed now, we will adjourn until the copies of the minister's statement appear in the room.

Hon Mr Phillips: I think it should be here within minutes.

The Chair: So we are adjourned until the statement arrives.

The committee recessed at 1428.

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The Chair: The standing committee on resources development will come to order again and we will continue with the minister's statement.

Mr Wildman: Where it says, "Check against delivery," what delivery are you referring to?

The Chair: This one.

Hon Mr Phillips: Start checking now. My apologies. It is, I guess, proof positive that we did not all have our minds made up before this process started, because literally we were working on this overnight.

I am pleased to be here and grateful for the opportunity to address the committee as it begins its clause-by-clause study of Bill 208.

As the members know, greater protection against workplace injury and illness is a major priority of our government. In 1988 more than 300 men and women died due to work-related incidents in our province, either through accidents or illness in the workplace. Last year our workers' compensation system paid out almost \$1.5 billion in benefits to thousands of workers who became incapacitated due to work-related causes. The human suffering and negative economic impact that these figures reflect are simply unacceptable in Ontario in the 1990s. We can do better and Bill 208 is a means by which we will do better.

Bill 208 will amend the Occupational Health and Safety Act. These amendments will do far more than merely update existing legislation. Bill 208 will have a direct impact on almost every working person in Ontario. This bill will make their workplaces safer. It will involve employers and employees in a more meaningful, more co-operative role in ensuring their workplace is a healthy and a safe place.

The bill will ensure that people are better informed about health and safety practices, better educated about their rights and better educated about their responsibilities. Bill 208 will build on the strengths of the Occupational Health and

Safety Act to make it the most progressive and the most effective safety law anywhere in North America.

The committee has received submissions from many groups and individuals in your pursuit of a cross-section of public input on the bill. The vast majority of them supported the principles of the bill. The committee's public hearings have made it possible for many voices to be heard on how to improve Ontario's health and safety legislation. Those comments have been instrumental in helping us to refine the bill and to make it better. I would like now to thank all members of the committee for their dedication and their attention to the task at hand. I appreciate that for all of you it has been a very difficult and a hard task, just in terms of the number of hours and I think the tension involved in the issue from all sides. I really do appreciate and thank all of you for that incredible work. I know it has been difficult, and I think emotionally difficult, for all of us.

Bill 208 is designed to build upon the basic, sound principles set out in the original Occupational Health and Safety Act, and particularly on the principle of internal responsibility. The internal responsibility system is predicated on employers and employees working as partners in assuming responsibility for workplace health and safety. The bill is designed to forge stronger partnerships among the workplace parties. It is designed to provide significant knowledge and training to the people in those partnerships. It is designed to build opportunities to use that knowledge in a responsible way to improve workplace health and safety. Bill 208 provides employers and employees with tools that will help build those stronger partnerships.

The bill requires some 30,000 additional workplaces in this province to establish joint health and safety committees. This means 30,000 more workplaces, including retail stores, offices and all construction sites with 20 or more employees will have committees to protect the health and safety of employees.

Carrying the principle of joint responsibility another step, Bill 208 will require the joint health and safety committee in every workplace to inspect that workplace or part of the workplace for health and safety hazards at least once each month, and the employer will have to respond in writing to any recommendation made by the joint health and safety committee and do that within a specified period of time.

Bill 208 is designed to strengthen another of the basic principles of the act, that of vesting significant new knowledge in the workplace

partners. If the law calls for workplace partners to expand their joint responsibility for workplace safety, as it does, then it is important that the parties be equipped not only with the appropriate authority, but with the knowledge on which to base sound decisions. They must have safety training prepared and delivered in a way that ensures both employers and employees are well informed and to a designated standard.

Bill 208 is designed to provide a means for the workplace parties to obtain a high level of training in health and safety procedures, a level of training that will apply across all sectors. For the first time Ontario will require at least one employer representative and at least one employee representative on most joint health and safety committees to be trained to a standard required for certification.

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This certification will mean thousands of people in Ontario will be trained to recognize and deal with health and safety risks on the job. It also means joint health and safety committees have a guarantee of a high level of expertise.

This training will be developed under the direction of a new Workplace Health and Safety Agency. It will co-ordinate and direct the activities of all of the province's safety associations, the Workers' Health and Safety Centre and the two occupational health clinics. The safety associations will continue their role of delivering safety training to the workplace parties.

In keeping with the joint responsibility principle, labour and management viewpoints will be jointly represented on that agency. Through the efforts of the agency, Ontario will be the only jurisdiction in North America to ensure people in all sectors are trained to a designated standard.

Safety education in the individual workplace will now be required by law. This will have a profound impact on the people in the workplace. Their joint health and safety committees will be assured of having knowledgeable, well-trained safety representatives on hand to assist in day-to-day safety matters.

The government will continue to play an important role in monitoring and enforcing the system. The bill addresses the need for enforcement in a number of ways. It includes amendments that extend the powers of Ministry of Labour inspectors. For instance, they will be empowered to seize evidence, to order equipment to be tested, to order employers to provide information to employees about hazardous materials.

It dramatically increases the maximum fines, for employers convicted of contravening the act, from \$25,000 to \$500,000. For the first time, the directors and officers of a corporation can be held personally accountable for following the act. They can be charged under the act and they are liable to a fine or imprisonment or both, if convicted.

The government has developed a number of amendments to the act for this committee's consideration. In doing so we have tried very hard to respond to the many briefs and submissions. In doing so we feel the bill has been considerably improved from the original amendments proposed last fall. We have attempted to deal with most of the concerns that have been raised that we can respond to, while still maintaining the sound approach and philosophy of the act. For example, we have tried very hard to build on the philosophy of fostering a co-operative approach between the workplace parties. We have consistently endorsed the principle of bipartism, where it can be applied, throughout the amendments.

I welcome the committee's review of these amendments and I would like to thank the people and the organizations who have shared their ideas and concerns with us. I believe the bill is much better for their input.

I mentioned earlier that the bill will set up the Workplace Health and Safety Agency. The agency will direct the province-wide training that will be offered by the health and safety organizations. The agency reflects the internal responsibility system at its most senior level. In the workplace, the internal responsibility system is based on a collaborative approach to health and safety matters.

This same approach must be extended to the partnership of the Workplace Health and Safety Agency. Accordingly, I am proposing that the board of directors of the agency will include an equal representation of labour and management viewpoints. I propose that the board consist of 16 part-time directors. Those 16 would include six representatives of labour and six of management, plus four members representative of the health and safety professions. Two of these would be nominated by management and two by labour. The board would include two full-time vice-chairs, again, one representative of business, one of labour.

To be consistent with the approach of the bill, I am proposing that the board be headed by a neutral but nonvoting chair. The chair would be selected by the minister from a list jointly agreed

to and put forward by the vice-chairs. As a nonvoting member of the board, the chair will be in a position to foster consensus-building. The chair will be in a position to foster an atmosphere of trust and constructive co-operation, within the context of a bipartite body. His or her role is to make the partnership work and to help the parties resolve impasses when they arise. We will consult with other members of the board of the agency and with others to determine whether this chair should be a full- or a part-time position.

I am also proposing that a small-business advisory committee be established to advise the Workplace Health and Safety Agency with respect to cost-effective ways to deliver safety training in small workplaces. This committee would be comprised in a way that represents constituent employers and employees in the small-business community.

While the agency will co-ordinate the province-wide training, it will be the provincial safety associations and the Workers' Health and Safety Centre and other organizations that will actually deliver that training to workers and employers. The discussion of the past few weeks has reaffirmed the importance of the associations and the centre in continuing that role. It is an important function that we believe will be enhanced, be more consistent and be better focused under the authority and the leadership of the agency.

The proposed amendments affirm the importance of the partnership approach by requiring the safety associations and the centre to have an equal number of employer and employee representatives on their board of directors. However, it would be up to the centre and the associations themselves to determine what kind of membership will achieve this objective. They would be free to choose persons that broadly reflect their sector, so long as a 50-50 employer-employee ratio is achieved on the boards of directors. If there is a dispute about whether the requirement of the act has been met, then a third party, independent of both the Workplace Health and Safety Agency and the Ministry of Labour, would determine the issue.

I would like to mention that the 50-50 composition of the boards does not affect the occupational health clinics. Our plan is to review the makeup of these pilot project clinics between now and the expiry of their present funding mandate. It may be that a different makeup is required for their governing bodies in order to reflect their unique medical function.

That deals with the key elements of the agency. I would like now to turn to the amendments which deal with the worker's right to refuse dangerous work. We have now had more than 10 years' experience with the right to refuse dangerous work. It has been found to be an effective technique for the individual worker to have his or her concerns addressed. However, it is a technique that can be improved.

In our opinion, the present act does not recognize work activity as a reason to refuse dangerous work. The proposed amendment will expand the right to refuse dangerous work to include a work activity as a legitimate reason for refusing, where the worker has reason to believe that that activity is likely to endanger him or her in the short term. This amendment has been reworded so that it is clearly set out as an addition to the present right to refuse in the act. In submissions before the committee, there was some concern that the bill would result in an actual diminishing of the present right to refuse. The amendment has clarified our intent not to produce that result.

Serious impairments, such as back injuries, account for a significant portion of the injury costs requiring compensation. It is these kinds of injuries the expanded right to refuse will address. I believe it will be an effective instrument in reducing pain and suffering, lost time from work and loss of productivity in the workplace.

During the recent hearings, much was said about the right of an employer to have work that has been refused performed by a substitute worker. It is important that the worker who is requested to act as a substitute be fully cognizant of any possible hazards inherent in that work. Therefore, I am proposing that the substitute worker be advised of his co-worker's refusal and the reason for it in the presence of a member of the joint health and safety committee. If possible, that representative should be a certified worker representative. This will allay the concern that a worker may be performing substitute work without receiving all the information he or she needs to make an informed judgement about performing that work. That individual worker would still have the right to refuse. This is a substantial step forward in improving the right to refuse dangerous work.

There have been a number of submissions pointing to concerns about a provision in the bill which calls for payment of workers during the first stage of a work refusal. Some argue that this provision could result in some workers being entitled to less pay than they now receive, under

certain circumstances, if the refusal progresses beyond the internal investigation stage.

Upon review, I now propose to remove this provision from the bill. We are satisfied that the existing decisions of the Ontario Labour Relations Board clarify when payment is required.

Let me explain how, in our opinion, the act now deals with the payment issue. The act requires a worker to stand by during the first stage of a work refusal. It is the legal opinion of my ministry that the worker is entitled to pay during this initial stage. If the refusal progresses beyond the first stage, the worker may be reassigned to alternative work, if it is available, and be paid. Where alternative work is not available, the provisions of the collective agreement or the employment contract will prevail.

1450

The next issue I would like to address is the authority to stop dangerous work. We have heard wide-ranging views on this subject. Some employers have said that the internal responsibility system depends on joint responsibility. A departure from that course of action could be detrimental to the effective functioning of the joint health and safety committees.

Employers have also said that the technique for ensuring the stopping of work must not be compromised. They have said it must be designed to be consistent with the way all occupational health and safety decisions are made in the workplace where the internal responsibility system is effective. In such workplaces, the health and safety record reflects the commitment of both the employer and employees.

Workers and their representatives have said that there must be effective mechanisms for ensuring that dangerous work is stopped. They do not believe a joint authority is sufficient. This concern is particularly great in relation to those workplaces where the commitment to joint responsibility for health and safety has not sufficiently matured. They say that in those situations they do not have confidence that dangerous work will be stopped if it is contingent upon agreement of the two parties.

I would propose that, in other than exceptional cases, amendments will authorize joint decision-making by the two certified members to stop dangerous work. The government proposes to authorize the two certified health and safety representatives to consult on a potentially dangerous work situation and jointly order work to be stopped where the danger appears imminent. If the two certified representatives cannot agree,

a Ministry of Labour inspector will be called in to make a decision.

The bill will make it clear that if a certified member fails to act responsibly in exercising his or her authority, he or she will be subject to discipline. The action that would be taken would be decided by an occupational health and safety adjudicator, who would be independent of both the Workplace Health and Safety Agency and the Ministry of Labour.

This new addition to the bill reinforces the partnership concept. Both the immediate accessibility to the Ministry of Labour inspectorate and the individual right to refuse dangerous work stand as expeditious and effective safeguards when the two certified members are legitimately unable to come to agreement.

Clearly, some workplace parties, based upon the maturity of the occupational health and safety system in their workplace, may agree to more independent authorities for their certified members. The act will allow such agreed-upon arrangements.

Where it has been determined that the employer has not demonstrated real commitment to health and safety in the workplace, I am proposing another course of action. There must be an alternative available for those situations where there is evidence that the joint approach is not working.

I am proposing that the occupational health and safety adjudicator, who would be independent of both the agency and the Ministry of Labour, may determine through the application of clear criteria that the employer has not demonstrated adequate commitment to occupational health and safety. If he or she finds this is so, either or both options could be imposed. He or she may decide to place a Ministry of Labour inspector on the site. The inspector would assist in improving the situation in that workplace. This would be done at the employer's expense. As well, the adjudicator may grant a unilateral stop-work authority to the certified worker representative.

I would like to point out that any decisions of the adjudicator will be independent, and the parties have the right to a hearing before any decision would be made. Also, any orders made by the adjudicator will be time-limited and there will be a return to joint authority once the workplace situation improves to an acceptable level.

As for the criteria by which the adjudicator will make his or her decision, these will be established in regulations to be passed by the

government. I do not propose to introduce those regulations at this time. Rather, I would like to consult broadly. However, I will provide to the committee an example of the kinds of criteria that might be considered appropriate.

Our view is that the cases in which this exceptional power would need to be applied should be small in number. When the rest of the act is working well and both the specific requirements and the intent of the act are being met by employers, this special step should not be required.

I would now like to deal with the right of public sector employees to refuse dangerous work. During the hearings a number of submissions raised this issue. Some public sector employees, such as police, firefighters, correctional officers and health care workers do not have the right, or have a limited right, to refuse dangerous work. The issue has been how to protect these people from personal risk without compromising public health and safety.

I am proposing that the ministry establish one or more committees in each sector. They will be required to establish procedures—short of the right to refuse—to ensure public employees are protected. These employees would have recourse to senior levels in their organizations, if necessary, if they are asked to work in situations which could endanger them.

These committees will be comprised of employers and employees in each sector. The procedures they develop would be regulated under the act and would allow for speedy resolution of potentially hazardous situations.

We have stopped short of the right to refuse because of the public interest, which is clearly at stake in these situations.

The proposal I am suggesting provides much greater protection than that presently provided in the act. I would ask the committee to consider this proposal carefully. We cannot offer people theoretical protection that they would be reluctant to use because of their dedication to duty. We must offer them provisions that will give them practical benefits.

There will be some people who are dissatisfied with the proposals before you regarding the composition of the agency, the agency board of directors, the right to stop dangerous work provision, and the public sector approach to the right to refuse. They are issues that have been of major importance to the people who have come before the committee and opinion, as you know, has varied quite widely.

I am proposing an amendment that will require an independent review of all three of these elements within the act, three years after the bill is proclaimed.

As I announced last fall, I am proposing a number of changes to make the bill workable in the construction sector.

There is a requirement for a joint health and safety committee in those workplaces with 20 or more employees. However, we propose to raise the level at which certified representatives are required. Following further consideration of the proposals and the review of submissions made to this committee, we are now proposing this apply to workplaces that have 50 or more employees, and a project duration of three months.

There will be amendments that propose a specialized approach to selecting certified persons within the construction sector. There is much more work to be done by the Workplace Health and Safety Agency in this area.

Concerns have been raised by a number of employers about the viability of the worker trades committees on construction projects. We are proposing that this requirement exist on projects lasting three months or more and regularly employing 50 or more workers. This is proposed in the bill as a means of avoiding unwieldy joint health and safety committees.

We have consulted broadly on this issue and continue to do so, and there does not appear to be any easy answer beyond the one that is being proposed.

In this area, a special effort may be required by the sector safety association, the worker centre, other organizations and the Ministry of Labour to make this approach effective and not disruptive on construction sites. I will make every effort to see that this requirement is introduced in a positive and useful manner.

There are a number of other proposals before you that will strengthen the bill. We are proposing an independent body to respond to appeals under the act, as well as those established in the bill.

This is an issue that has arisen since the bill was introduced, and this is outside the scope of the amendments. However, it is an important change that is, I believe, widely supported. I will be asking for the committee's consent to introduce an amendment to the act that achieves this.

We are proposing to take out the right of other certified workers to countermand a stop-work order, where the unilateral authority to stop work exists.

We are shortening the time within which an employer is required to respond in writing to the concerns raised by the joint health and safety committee.

Where a workplace is unionized, we are clarifying that the safety committee representatives must be chosen by a method determined by the union.

We are ensuring that employers' representatives on the safety committee are employed on the actual work site, if at all possible.

We are extending the time requirement, so that the safety associations and workers' training centre can more properly implement the changes that the bill will require them to make. In some areas, answers are possible outside this bill. For example, we will deal with the concerns of some employers about the disclosure of trade secrets, through policy or legislative changes elsewhere.

As I said earlier, the committee process has been vital to the development of this bill. The hearings have provided excellent insight by knowledgeable people into ways to make this legislation more effective and workable.

For example, the Ontario Federation of Labour presented this committee with a number of recommendations. We have considered their submissions, along with all other submissions, and in fact acted upon several of their recommendations.

There have been some submissions with which we have not agreed. The committee, of course, will be discussing them and we will be discussing them later.

1500

I am looking forward to the committee's clause-by-clause examination of the bill. I believe this exercise has already produced a much improved piece of legislation and, as the process continues, further refinements will add to its effectiveness.

In my judgement, Bill 208 will make the Occupational Health and Safety Act the most progressive health and safety legislation anywhere in North America. It will help strengthen the internal responsibility system, so that workplace parties will continue to have joint rights and obligations in protecting their fellow workers. Bill 208 will change the way health and safety is understood and practised in workplaces all across the province.

I look forward to a time when some 50,000 workplaces in Ontario have joint health and safety committees at work. I look forward to the day thousands of trained, certified workers of those committees are in place and passing on

their expertise to their co-workers. I look forward to the future, when the Workplace Health and Safety Agency is co-ordinating the delivery of that training all across the province. I look forward to the day Bill 208 is passed, because I am certain it will result in fewer people being incapacitated or killed on the job.

I wish the committee much success as it examines each clause of Bill 208 in the coming days.

The Chair: Thank you, minister. Mr Mackenzie, do you wish to respond?

Mr Mackenzie: First, I would like to submit copies of the amendments that we will be moving to this legislation. My comments are not going to be lengthy. There are a number of matters of concern and I think one or two lead-ins that are necessary.

First, I would like to say that we looked at Bill 70 a number of years ago with real hope that it was a good part of our answer to health and safety in the workplace. Indeed, I would rather have it than not have it. However, its shortcomings have been that the ministry seemed to practise avoidance rather than enforcement in terms of the act itself, and there is a general feeling and, indeed, I think enough evidence to suggest that the lack of enforcement in that legislation was much of our problem.

It is also obvious that we are not likely to see a large number of new health and safety inspectors taken on staff. At least, I would be surprised if that is the approach of this government.

But it was the lack of proper enforcement that resulted, I guess, in the push that we have for the current Bill 208 and the absolute necessity of it.

Apart from that comment I also want to say that I am personally, and I know my colleagues are and certainly a number of people who have appeared before this committee are, more than a little unhappy with the process we have gone through.

We have been dealing with a bill that is probably, in terms of workers' participation in the workplace, one of the most important pieces of legislation we have seen maybe since the original Bill 70. We have not had any clear indication of what the final position was going to be on a number of the most fundamental issues in that legislation. And, with due respect to the minister, we have had from time to time during the course of the hearings newspaper stories that certainly raise serious questions as to just what the hell we were discussing and what the people coming before us were discussing in terms of this legislation.

If you add to that today—and I know it is almost a practice now of this government of holding press conferences on key issues—but I, personally, am offended that before we saw these amendments in committee we had them delivered, at least to the members of the committee, I guess, maybe 40 minutes before the press conference; that the press conference was held dealing with the amendments which we had not seen or which had not yet been presented to this committee and which certainly we did not have the advantage of having before us during the course of the hearings.

I think there are serious flaws in the process we have gone through and I think it is a process that this government would be well advised to reconsider. I think it certainly does not lead to a hell of a lot of confidence on the part of people who have concerns in this field. And it sure as blazes does not lead to a hell of a lot of confidence on my part as to the usefulness, almost, of the committee hearing process and whether or not you are going to be able to make a proper assessment of what you are eventually going to look at.

A quick look at what we have before us indicates that there are some improvements. I would readily admit that. Some of them I think have some importance. I want to take a better look at them. That is one of the reasons why I am maybe not doing my usual harangue at the minister at this point in time, even though I am very unhappy with it. But I want to tell you very, very clearly that there are still main points in the discussions we have held that were not responded to in a manner that I think is sufficient to ensure any real belief that Bill 208 is going to be a hell of a lot better than Bill 70 in the workplace. I do not share the minister's feeling that we have world-class new health and safety legislation because I do not see in it, without a real strengthening of the internal responsibility system, what is going to guarantee that we will not have the same old practices of avoidance rather than prosecution or enforcement that we had with Bill 70 in the past.

I think that the agency and the so-called neutral chair is a serious flaw in the legislation. I think it is a serious flaw in terms of achieving the internal responsibility system and making it work in workplaces in the province of Ontario. I am not happy that the minister has come to the conclusion that he is going to give to business in this major area—and I do not see what else it is but a concession to business. It is certainly one of the strongest points that labour has difficulty with and it is certainly, to my thinking, not one that

guarantees that we have the kind of responsibility and authority that is necessary by the workers in the workplace.

I raise once again the old argument that we have had raised many times: where the hell do you find a neutral chairman? What do you do in terms of sloughing off the necessity that workers and management work together in terms of health and safety problems if there can be a third party involved in it?

The certified representative's right to shut down an operation: you can eventually appeal the procedure if you do not like it, as I read it, and I want to take another closer look at that section of the bill, but it seems to me that we have not got a unilateral right. Coupled with the agency and the bipartite rather than tripartite approach, the unilateral right, in an unsafe situation, to shut that down is simply not there. You do not have to read very closely the amendments that the minister has brought before us to find out that, yes, the worker goes in and he thinks it is unsafe; he talks to his foreman or supervisor; he then calls in, if he cannot reach agreement, the company-certified nominee. If the two of them cannot reach an agreement, they call in the minister. That is in the first and sometimes the most essential stage of a work stoppage in a serious situation. I do not think it is adequate and I do not think it gives the workers the authority they need in this particular situation. I think the public sector has still been shortchanged in terms of its right to refuse.

We talk about a committee looking at the practices and procedures in the public sector. I want to remind the minister—it may not be a total analogy but to me it is certainly apropos—that we had an agreement that new health regulations were necessary in the hospital field. We had a committee set up that worked for a long time on developing regulations, including management people, and we had a committee that reached agreement, unless I am totally misinformed. They came to the ministry and all of a sudden the Ontario Hospital Association, which had two members who originally were in agreement on that, said, "Hey, this is not what we want." And who did the government listen to? There was quite an uproar from hospital workers. It sure as hell was not the hospital workers who were involved and they are the ones who suffer the consequences, not management, and we did not see those regulations. I do not know of any move at the moment to see them. That was a sort of committee approach. What reason is there for me to believe that it will be any better than that?

1510

I think that it is important in this legislation that we take a look at whether or not we are really serious about trying to end some of the confrontation in the workplace. You are never, in the Canadian context—at least not in my lifetime, I believe—going to eliminate the confrontation situation that we have in our workplace. I am not even sure that it is a good idea totally, but I would agree without too much arm twisting that there are cases where it could be improved.

I do not know another area where the public is more on side, where the workers are more concerned and where we stand to move quicker in terms of reducing some of the friction that exists in the workplace than in the health and safety field. But I also know that it is going to have to be on the basis of an equal responsibility and equal authority. I am not satisfied as yet that the minister has achieved that in the amendments he has suggested to us today. I am also not happy that we get them, some of them pretty fundamental, as I said, after the press has them and after we have finished our hearings, because I think that is a little bit unfair—I could use a lot stronger word—to the many people who made presentations to this particular committee.

Myself, I want some time to take a look at these amendments, to see just how many of them balance out in terms of being of some use. I say that, making the comment that two or three of the most important fundamental areas, in my opinion, have not been addressed and that is going to make it very, very difficult to sell this particular piece of legislation. However, I would like to take a look at them and it is not my intention, until we have had that kind of a careful look at what we have before us and the extent of the amendments, to say anything further. Of course we will deal with them when we get into it clause-by-clause. I would think also that the members of this committee should take a look—I do not expect to see much action on them—at the amendments that have been submitted by our caucus as well, which have just been distributed to this committee.

I said I was not going to be long, Mr Chairman, and that is, for now, the extent of the comments I wish to make on this legislation.

The Chair: Does the critic for the Conservative caucus wish to speak?

Mrs Marland: First of all, I would like to ask whether, since we are responding to the minister's statement, some of my time can be reserved for tomorrow after I have been able to digest what

is in the minister's statement. If that is so, then I will be briefer than I would have been.

The Chair: I was concerned about that, as a matter of fact, earlier. We should make a decision as a committee whether or not we set aside a little bit of time in the morning. I think there is agreement that we do not want to take a lot of time tomorrow morning before we get into the clause-by-clause because it is a limited time we have. I do not think it is an unfair request, having just heard the minister's statement and having seen the complex package of amendments, to expect members to want to have a right to mull them over in the evening and earlier tomorrow morning, and at the beginning of the day have completed statements. So if the members would agree, the opposition critics in particular, to restrict their length of time they would take in the morning, then I suspect that in the interest of fairmindedness the committee would probably agree.

What kind of time would you want in the morning, Mr Mackenzie?

Mr Mackenzie: I would need very little additional time, if I take any additional time. I made that point clear. I do want to look at some of the implications of it and might need another 10 minutes, but I am not talking about a long period. I would support the request of my colleague to have some time to take a look at it if she wishes.

The Chair: Mrs Marland, how much time would you want?

Mrs Marland: I would like to have the option of up to 20 minutes.

The Chair: Is that agreeable to the committee? I think it is a fair request from the opposition critics. All right. Then we agree to that.

Mr Wildman: Mr Chairman, the clerk has pointed out to us that the amendments we have tabled with the committee are not in legislative language in the form of motions, and we would be happy to have legislative counsel assist in putting them into the proper legislative form.

The Chair: You will be in exquisite hands.

Mrs Marland: I think it is very important at the outset to make some comments on the process that we have been through with Bill 208 in the past six weeks. There is no question that, as the minister said, there has been a tremendous effort made by the members of this committee, certainly in the physical sense, going to whatever number of centres the committee has been to. I have lost count of the number of places we have driven up to in our Flintstones bus with the square wooden wheels. We certainly, I think, should

have had photographs of our arriving in our little mini-school-bus version of whatever so that the public does not think the committee travels around by Lear jet.

I think it goes without saying that all of us have listened very carefully and very conscientiously to the input of over 200 presenters. We certainly have received almost 300 briefs, and there is no question that there is a great deal of concern with Bill 208 by the public in Ontario.

I think with such a demonstrated concern by the public that I would have hoped that this Liberal government would have been a little more sensitive to the fact that there was a lot of concern out there. I think that for us to be travelling around the entire province, and to be faced from time to time with reported comments in the media from the minister while we were trying to deliberate on what it was the public was saying to us about this bill—and yet we were hearing statements attributed to the minister about what the bill was going to say in its final form and what the government was thinking about this bill.

I think it only goes to emphasize the fact that when I requested before we went on the road that we have the government amendments so that we could all save time and particularly the cost and effort of those groups that came before the committee—because there was no question that we had groups that we heard in northern Ontario, western Ontario or eastern Ontario who travelled there in order to have the opportunity to speak, not necessarily because that was their locale. I know the defence of the government is, “We wanted to hear the public input before we placed our amendments.”

Mr Callahan: That is how they came about.

Mrs Marland: But, in fact, the direction of the government was indicated by the minister's statements in the House last fall, and I think it is very obvious. Having just received this package of government amendments this afternoon, I do not know what they contain in detail, but I do know that a lot of them probably are the same as the minister indicated they would be last fall.

In talking about the process, I would hope that the next time an all-party legislative committee hits the highways and byways of this province with the amount of effort and expense that this committee has had, we are not followed around by comments attributable to the minister about exactly what will happen ultimately with Bill 208, when we are not given the courtesy of having those comments given to the committee before we go on the road or given to us even

through a member of his staff while we are on the road. I just am not happy that that took place.

Finally, on process, I think it is a real slap in the face that the priority for the government was to have a press conference today before this final meeting with us. I cannot see anything acceptable in that part of the process at all, and I would have thought that it would have been very easy for the minister to come in, to table the amendments, to give us his speech and then go out and hold his press conference.

1520

I think that would have been the least courtesy the minister could have given us for the amount of effort that we have committed to public hearings on his bill. I hope that does not happen again, that we are sitting at the beginning of a meeting as members of this committee—and I can only speak for the four opposition members; I do not know about the other members of the committee. But on this side of the room we are sitting without the minister's statement, and we have people in the audience with the minister's statement, those people who happened to have attended the press conference. I think that is a deplorable situation, and I am sure it is one which the minister himself will now ensure does not happen again, for his own sake.

To comment very briefly, I just want to say that I hope we will hear along the road—as the minister says on page 11, “There have been some submissions with which we have not agreed, Mr Chairman, and we of course will be discussing this with the committee.” I will be interested, as a member of this committee, to know when that discussion will take place and whether the minister's direction will go through his committee members, or when we will discuss the submissions that the minister did not agree with, because I think it is important for the public to know which submissions he does not agree with.

Where the minister is talking about extending the powers of the Ministry of Labour inspectors, I am wondering if he could address for us whether he is planning to extend the number of inspectors, because one thing we have heard over and over again in the last six weeks is that even the existing acts are not being enforced and some of the terrible examples of tragedy and injury that have been experienced by people in the workplace in Ontario have come as a result of the fact, to use a quote of the New Democratic Party members, that unbelievably, we do have more inspectors in the province apparently for fish and wildlife than we do for workplace safety. I think that if you have not requested an increase in your

budget, Minister, to address the number of inspectors, we will certainly be looking for you to answer the question about the number of inspectors.

Another area that I will be looking for an answer about is where you have talked about the representation for the Workplace Health and Safety Agency. You talk about an equal representation of labour and management. I would like to know how you are going to address the representations under the labour part of nonunion or unorganized labour, because that is not addressed in your statement today.

I congratulate you for agreeing to the non-voting chair. That was a suggestion that was made as we went around the province, and it seems to be the only practical way of dealing with the neutral chair, not to give him a vote.

I think that the rest of my comments I will leave until tomorrow, but perhaps on the questions that I have raised today I could have an answer from the minister or his staff before we finish the clause-by-clause.

The Chair: A number of members have indicated an interest in speaking, but I thought the agreement was that we would hear the minister's statement and the two opposition critics today, and then tomorrow we will get into the clause-by-clause.

Mr Wiseman: We have the minister here though, Mr Chairman. We all have some concerns that we would like to raise.

Mr Wildman: I have no interest in speaking to the minister.

The Chair: I understand that, Mr Wiseman, but I do believe we had an agreement with the committee and I do not think we should overturn that.

Mr Riddell: I wanted to ask Margaret what she liked about the play.

The Chair: You cannot do that. Mr Phillips, did you wish to respond to the critics now or do you want to wait until tomorrow morning? Are you going to be here tomorrow morning?

Hon Mr Phillips: I can come tomorrow morning and hear it.

The Chair: I think that would be appropriate, if you could be here tomorrow.

Mr Wiseman: Because it is such an important bill and the minister said he could be here tomorrow morning, I, for one, would like to have the minister here for the clause-by-clause so that he and his deputies can hear the concerns we have and perhaps accept some of the amendments that the opposition might bring through—I hope. I

think this is an important enough bill that the minister himself should be here.

The Chair: That is a fair question. Mr Minister, would you respond to that?

Hon Mr Phillips: I would be happy to be of maximum assistance to the committee. One approach is that where you run into contentious ones, perhaps they could be set aside, rather than necessarily me being here for the entire clause-by-clause, to be here for the ones where there is disagreement on it. That would be acceptable.

Mr Wiseman: If I could, Mr Chairman, having been a minister myself, and I am sure Mr Riddell will feel the same way, on something like this, we would like to have the minister here because only the minister, not the parliamentary assistant or the deputies, can make those decisions without having a little powwow with you. I would like to have you here to do it myself. I do not think it is enough to just set them aside and you are not privy. Sure, you could read Hansard, but being as busy as you are, I doubt if you get a chance. But others do and you are getting their views on the matter rather than being here and hearing it the first time yourself.

We are only discussing it for three days, and I think for a bill this important that if I were the minister, I would set aside that time to make sure I was here and hear it first hand and be able to accept the amendments and not set them aside and have a discussion at a later date, but be privy to all the discussion that went up front. We are only talking about three days.

The Chair: I think that is an important point, Mr Wiseman. Just so everybody understands, the committee meets tomorrow, Thursday, and then it meets next Monday and Tuesday on the clause-by-clause, and that is the end of the process until the Legislature returns. So everyone understands, the schedule was set a long time ago.

Hon Mr Phillips: I will try to be as much help as I can to the committee. Whether that is the most help or whether I can set aside the time to be available when I am needed, let me think about that overnight, Mr Chairman.

The Chair: Okay. I just wanted to say a couple of words. The process was at times difficult, with a lot of emotion in the room, and also the whole problem of arranging presentations before the committee when there were several times as many who wanted to make presentations as were able to. I want to express, and I am sure I speak for the committee, my appreciation to Lynn Mellor for the very difficult

job that she did so well in arranging the hearings. She really did a fine job for us.

I would be remiss if I did not express my appreciation to the members of the committee. I know there were times when it was tempting to perhaps even move adjournment of the committee when things got tense, but we hung in there and I think that the attendance of committee members was really good. There was a lot of interest in the bill and they have served the committee system well.

I have, not because I am chairman, an abiding interest in the integrity of the committee system around this place and I very much hope that that will be maintained. It gets threatened every now and again, but it is the one thing that ordinary members of this assembly can do to have an important role in shaping legislation. So I trust that we will all work to that end. I wish to thank committee members for that.

Mr Wildman: Mr Chairman, if I could just say that while there were some tense moments during committee hearings and around the times of committee hearings, I am sure that there has not been any personal animosity that has grown up among any members of the committee, who have such strongly held positions and strongly held opinions. They are simply put forward in the context of a very important discussion and were not in any way meant to be personal.

I would just also like to say that it is going to be very difficult for us in three days to cover all of

these amendments. There are 40 pages of government amendments. It is going to be really hard to do and it is going to be quite a task for us.

Mr Dietsch: Mr Mackenzie placed his party's amendments on the table, and I am asking whether Mrs Marland is placing her amendments on the table at this time so that we can have the opportunity to review them as well. Is that going to take place today?

Mrs Marland: No. As a matter of fact, our staff has not had enough time yet to complete the amendments, so I do not have the amendments today.

The Chair: So the amendments will be tomorrow morning, Mrs Marland? As soon as possible?

Mrs Marland: No. I operate differently than the Liberal government. You will not read about them in the newspapers.

Mr Wildman: To be fair, Mr Chairman, we only did get the government amendments today. The opposition parties were waiting for the government amendments to determine what their amendments would be.

Mr Dietsch: I am simply asking a question as to when they will be laid down on the table.

The Chair: Okay. The committee is adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1531.

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No. R-20 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Resources Development

Occupational Health and Safety Statute Law Amendment Act, 1989



Second Session, 34th Parliament

Thursday 22 February 1990

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday 22 February 1990

The committee met at 1013 in committee room 2.

OCCUPATIONAL HEALTH AND SAFETY STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Chair: Order. We continue with the clause-by-clause examination of Bill 208. We had agreed yesterday that the first half hour this morning could be used by the two opposition critics, and then a response from the minister to their comments. Mrs Marland, I gather, is almost here, so perhaps we could start with Mr Mackenzie.

Mr Mackenzie: I said yesterday that I would need very little time, if any. I think my comments will just simply reiterate what I said yesterday.

I acknowledge there is some movement, obviously, in this bill from what we started out with, and that is an encouraging sign. In one or two areas, there is some significance to the moves. My disappointment is that I am not sure we have moved the extent we need to bring about the workable internal responsibility system in the workplace and the authority that is necessary for workers.

I always have some difficulty when we get a substantial number of amendments, but you almost have to quantify them, one or two wins, one or two losses, and then whether it is a 10 per cent or a 20 per cent or a 40 per cent gain in that particular amendment is difficult. But I have also have enough knowledge of collective bargaining to know it is sometimes the way you move.

I am not, I want to make it clear, personally happy as yet with this bill. I am far from happy with the extent that this bill goes towards adequate protection in the workplace, but I think from here we will have to make the arguments in the individual sections in the bill.

Mr Wiseman: Maybe I will get a chance to—

The Chair: Maybe you will get a chance to say a few words, Mr Wiseman.

Mr Mackenzie: I am not sure this was to be part of it. I am wondering as yet if we have any

more of a response on the perceived intimidation of people who were before this committee.

The Chair: Perhaps I could respond to that. There has been a request that we hold that off until this afternoon while we got any more information. I thought that was not an unreasonable request.

Mr Mackenzie: Thank you.

The Chair: Mr Wiseman, did you wish to say a few words?

Mr Wiseman: Yes. I was wondering, where we mentioned the agency, we just mention workers. We do not say, like we heard when we were out in the field listening to briefs, that in most cases anywhere from two thirds to 70 per cent of the workplace out there is nonunion.

I just thought perhaps you would have defined that a little bit more; that they would be made up of union and nonunion representatives on that —was it six-man?—yes, six from labour, you mentioned. But I think it should be broken down. Almost every place we went, they said they were concerned that it would not be well represented by both. I would just like to see that. Again, on page 5, we mention 50-50, but each time we mention it, it seems to be we just mention labour and not the breakdown between labour and unionized employees.

The one area that we heard about that was not mentioned was the shipbuilders and who has responsibility for those. In Ottawa, when we were there, we heard that once a vessel becomes afloat, then it is a federal responsibility. Even though it goes into drydock or it goes in to be tied up for repairs or alterations, it is still under federal responsibility. But in Thunder Bay we heard from the people up there that they have had a case or two, and have documented them, that one would say it is the other one's responsibility and the worker who was injured did not have a clear-cut avenue to get help.

I wondered too, we seem to have added on page 8—I am getting ahead of myself. Over where we mention what happens to an employer on page 4, where we say that the fines are going from \$25,000 to \$500,000 and then in the next paragraph we say that he can be fined or imprisoned or both. We seem to be really, really heavy on the employer there.

Then we jump over. We do not see right there what happens to the worker who calls a halt to the work and does not have a justified complaint. We see that it is just that he will be disciplined and "disciplined" is not really defined. In the present act, before anything was done, it said that he or she would be decertified, but it does not seem to me to be enough to just decertify someone, if you could imprison and fine an employer, and just slap the worker on the wrist for that.

1020

The Chair: Could I intervene here for a moment, Mr Wiseman. We do not get into the clause-by-clause debate at this point. That is still to come.

Mr Wiseman: No, but I just wonder why it was not mentioned in the minister's statement.

The Chair: But you are starting to debate the actual clause that is contained in the bill, so I would discourage you from doing that.

Mr Wildman: Mr Wiseman could always move an amendment to imprison workers if he wished.

Mr Wiseman: I am not saying that. I just want a level playing field.

The Chair: Okay. Can we revert to the critic's statement now, Mr Wiseman?

Mr Wiseman: Sure.

Hon Mr Phillips: I assume, Mr Chairman, as you point out, that each of those issues will be addressed and must be addressed in clause-by-clause. I would be happy to answer them, but I think that each of those is fairly fundamental to the clause-by-clause.

Mr Wiseman: I just wondered why you had not touched on those when they came up so many times in our discussions over the last five weeks.

The Chair: The minister can respond to that if he wishes when he replies. Mrs Marland.

Mrs Marland: I am just going to respond to the statement of the minister from yesterday. I want to say again that in my opinion, the government's handling of this bill has been poor since day one, and I mean, by "day one," 24 January 1989. The government has communicated poorly with those directly affected by the proposed legislation. Former Labour Minister Greg Sorbara said the following when Bill 208 received first reading in the Legislature on 24 January 1989: "Since 1985, the Ministry of Labour has been actively and aggressively involved in the reform process that directly addresses the government's commitment to

improving the quality of the workplace environment."

In an article which appeared in the Toronto Star on 28 September 1989, the Minister of Industry, Trade and Technology, Monte Kwinter, gave a better indication of the government's active and aggressive involvement in the area of occupational health and safety. Mr Kwinter said: "We had a breakdown in communication. We were lead to believe there had been consultation (with business) and that they were on side."

The present minister, Mr Phillips, assumed the Labour portfolio in August in order to save Mr Sorbara the embarrassment of having to gut Bill 208 himself. Said Kwinter, "We have a window of opportunity, with a new minister who can bring in a fresh, unbiased approach."

The government quickly realized that the bill was seriously flawed and unworkable. The government, not the opposition, called for broad public hearings on Bill 208. Another example of the government's "ready, fire, aim" approach. The government approached the key players for serious discussions only after the bill had received first reading. Consider how we had to fight and scream to get public hearings on Bill 162, and then look at the new minister making every effort to accommodate changes to the substance of Bill 208.

Concerning the minister's remarks which began the clause-by-clause hearings yesterday, the minister is trying to use the public hearings process to justify changes to the bill which were conceived well in advance of the hearings. Concerning submissions received by the committee, I find it funny that the minister would say yesterday, "The vast majority of them have supported the principles of the bill." It should be of no surprise that workers and employers alike wish to improve workplace safety. The minister demonstrated a profound grasp of the obvious.

The minister should check his 12-page speech against the eight-page speech also released yesterday. He will find the following.

On page 2 of the lengthy speech, it says, "Carrying the principle of joint responsibility another step, Mr Chairman, Bill 208 will require the joint health and safety committee in every workplace to inspect that workplace, or part of the workplace, for health and safety standards, at least once each month."

On page 4 of the 8-page speech: "We're offering specific incentives to companies that have a good track record. A high-performing workplace could be offered the benefit of fewer Ministry of Labour inspections." The purpose of

Bill 208 is to improve workplace safety. How can fewer inspections be viewed as a benefit and, I would ask, to whom?

The minister is a master of the doublespeak and is to be commended for making bold statements and quickly qualifying them sufficiently to confuse everyone. Yesterday he stated that Bill 208 holds the promise of "a level of training that will apply across all sectors." However, he quickly amended this statement in the next paragraph saying, "For the first time, Ontario will require at least one employer representative and at least one employee representative on most joint health and safety committees, to be trained to a standard required for certification."

The minister said, "The government will continue to play an important role in monitoring and enforcing the system." With so much of the Ministry of Labour's workload being offloaded to workers and employers, perhaps the minister might wish to expand on what he meant by "the important role" his ministry will play in monitoring the situation. Is this somehow related to a thousand points of light?

The minister said Bill 208 "includes amendments that extend the powers of Ministry of Labour inspectors." With an extra 30,000 work sites to be covered by this bill, unless there is a corresponding increase in the number of inspectors, the effectiveness of inspectors is actually decreasing.

The minister also said, "We have consistently endorsed the principle of bipartism." He knows that is not the case. Just look at the original wording of the bill as it relates to the Workplace Health and Safety Agency. Amendments tabled yesterday—at the press conference, I may add—a chair to the Workplace Health and Safety Agency. The minister should know that bipartism involves two parties, not three, even if one party is neutral.

The minister has been purposely vague on the power of the chair added to the Workplace Health and Safety Agency. He said that the chair will "foster consensus-building" and "help the parties resolve impasses when they arise." Perhaps the minister might wish to expand on these euphemisms.

The minister stated, "Mr Chairman, we will consult with other members of the board of the agency and with others to determine whether the chair should be a full- or part-time position." The minister has had over one year to make Bill 208 workable and complete, and yet there are still matters that are unsettled.

The minister said that the work of the provincial safety associations and the Workers' Health and Safety Centre will be "more consistent and be better focused under the authority and leadership of the agency." Perhaps the minister could expand on the perceived shortcomings of these groups.

The minister said that the work refusal provision will be modified to cover work activities in cases where the worker believes the activity is likely to endanger him or her in "the short term" or if "danger appears imminent." The minister is purposely vague on the time span, and this point needs to be addressed. After all, the next line reads, "This amendment has been reworded so that it is clearly set out."

The minister said, "The bill will make it clear that if a certified member fails to act responsibly in exercising his or her authority, he or she will be subject to discipline." The minister again should explain what he means by this vague notion.

The minister said that an occupational health and safety adjudicator can "decide to place a Ministry of Labour inspector on the site" if the employer has not demonstrated adequate commitment to occupational health and safety. Do you not think that you are spreading the inspectors a little bit thin with 30,000 new work sites coming on stream, as I said earlier? The inspectors are busy enough already. Clearly enough, more inspectors are needed for this bill.

I think the question about what happens to the certified worker who fails to act responsibly is something that has not been addressed anywhere other than to say "subject to discipline." If we are going to have a balance of responsibility between the employer and the employee, then I think there has to be an equal sharing of the liability and the employer cannot be put in a position where he loses multimillions of dollars on an assembly line because somebody who fails to act responsibly simply gets decertified. I think there has to be a tremendous emphasis on who is liable and what happens when the responsibility is not enacted as it should be.

1030

Concerning public sector employees with limited rights to refuse work, the minister said that there will be "established procedures"—short of the right to refuse—to ensure that these employees are protected. What are these established procedures and why are they not in place already?

The minister stated, "There will be amendments that propose a specialized approach to

selecting certified persons within the construction industry.” Why are these not specifically included in this bill? How is the construction industry going to know where it is with Bill 208? The fact is that they do not want it and apparently in their expert opinion they do not need it. But here we have a bill that still does not answer the question as far as that industry is concerned.

The minister also said: “In some areas, answers are possible outside this bill. For example, we will deal with the concerns of some employers about the disclosure of trade secrets, through policy or legislative changes elsewhere.” Although answers are possible elsewhere, they should be included in this bill. It is with this bill that those people who came before us addressed their concerns about their trade secrets and the formulas they use to manufacture their products. Therefore, if they are affected by this bill, it is this bill that has to address what protection they can have if this bill is going to be enforced. There is no point in saying it can be addressed elsewhere. We heard that suggestion at least three weeks ago, so certainly the staff would have had the time to address it so that it could be included in the bill.

The minister also said, “There have been some submissions with which we have not agreed, Mr Chairman, and we of course will be discussing this with the committee.” As I said yesterday, I would like to know when, and I would like to know particularly, if those discussions are not going to take place now and they relate to any sections of this bill, what is the point of discussing it after the bill is passed?

The minister also said that employers “could see reductions in the amount of money the employer must contribute to fund the Workers’ Compensation system.” Minister, that was a very important statement that you made, because the unfunded liability of the Workers’ Compensation Board stands today at \$7.5 billion and we know that it is going to rise to in excess of \$10 billion dollars by the year 2000.

Assuming that Bill 208 is successful in reducing workplace accidents across the province—we certainly hope that if that is the purpose of the bill, that will be the result of the bill—who is going to pay for the WCB if we chop everybody’s rates? The minister should not hint about cost reductions to employers when clearly he has no intention of reducing assessments, and if you do have intentions of reducing assessment, in fairness to the employers I think you should explain how that is going to happen, or maybe you should ask the Treasurer to explain—whoever

is going to address the unfunded liability of the WCB.

Finally, when the government amendments were introduced during the clause-by-clause hearings on Bill 68, which was the automobile insurance bill, a written rationale for each amendment was given. I would like to ask why that is not the case here. Does the media again have the information we do not have?

Finally, I want to end with a little humour, because I do not want to be the big, miserable critic. The minister is to be commended for trying to limit his use of euphemisms and fuzzy phrases. In his speech on second reading of Bill 208 the minister used the term “partnership” no less than nine times; yesterday he used it five times. During second reading he coined various uses of the term “principles” seven times; yesterday he used the term only three times. So we would like to say, “Well done.”

Hon Mr Phillips: A lot of the comments, I think, are on the detail of the bill and therefore there is a risk I will be somewhat redundant, but I will touch on some of the key points that have been raised.

In terms of the process, because both critics made comments on the process, I think we all—it almost goes without saying—recognize that this is a difficult issue with, as you saw through the six weeks of hearings, strong opinions on the issue. It is obviously a crucial issue for all of us. We have been through all the statistics, but behind them are the tragedies of the accidents. I have wrestled with this since I became the minister. It has consumed, I dare say, at least half of my time trying to find what is the most workable solution.

I find myself sometimes in a difficult position because you would like the written rationale on all the amendments, but genuinely we have been working right up to the last minute trying to reflect the issues that have been raised at the committee. It is difficult to have it both ways, to have it all buttoned down neatly but still try and reflect what goes on at the committee hearings. I think you may even find today that the package is not as easily spelled out for you as the committee might like, but it is trying to balance that. It is trying to reflect the opinions that came to the committee through its hearings and not to have prejudged.

I think the critic for the New Democratic Party suggested there has been some change—I think significant change; I think improvements. I think they do reflect what we heard at the committee’s hearings and certainly I am most anxious that the bill end up being one that works best. As I say, I

think it is a difficult process to try and reflect the hearings and still have it packaged as you might like it.

Just on a few of the points that were raised, it is our intention, as you know, that the agency be on the employees' side made up of organized labour. That will be the debate we will have. We think that makes sense and we recognize that not everyone agrees with that. You were talking about what are the things that people do not agree with. Well, I think during clause-by-clause we will hear all of those things. In answer to the comments from Mr Wiseman, it is our intention that the representatives on the agency be from the organized labour front, for a bunch of reasons we will get into in clause-by-clause.

You mentioned that it will be difficult for the inspectors with 30,000 new workplaces. I think it is important to recognize we are not talking about 30,000 new workplaces. The Occupational Health and Safety Act applies to all the workplaces. The 30,000 new workplaces are where we are proposing the addition of joint health and safety committees. We think it is going to require, over the short term, some increased workload by our staff to help facilitate that. Over the longer term, if the bill works as we believe it will work, with—pardon me for using this term—principled partnership, we will find that it will improve health and safety in the workplace without putting increased responsibility on our inspectors.

In terms of the chair being full-time or not, again I go back. You say we have had a year or two to debate that, but initially, as everyone I think realizes, there was not a neutral chair proposed. It was only when we had it out to committee that we suggested that may be an appropriate approach, and it was only as we heard the comments at the committee that we have suggested that it be a nonvoting neutral chair.

When you say, "You have not made up your mind whether it be full-time or not," I think we do want to get some opinion on that. It is our expectation for the agency, and the reason for making the chair nonvoting, to put a format in place where the two parties reach consensus, as opposed to running the risk of the two parties entrenching themselves in looking to the chair to make the decision. We listened to the opinion and I think yesterday you agreed with that, actually, that the nonvoting chair is a sensible approach. I think it is sensible.

Vague on the time frames: We will get into that in terms of the right to refuse. I think that is a fairly detailed one.

In terms of penalties for abuse by a worker, I think it is very important that the bill be balanced and that we not put in the bill the kinds of restrictions where reasonable people would say: "The penalty is too great to take a risk. The penalty is too great for me to say that I think we have to do something in the workplace here." We will get into discussion on that, but we have tried to balance that to ensure that we not put in the bill things that employees would find so punitive that they would not exercise legitimate safety responsibilities.

Underlying the bill, actually, is the hope that we will have some trust in the workplace. I think it exists to a very large extent. You cannot, when there are 230,000 workplaces and five million people in the workplace, say that in every single instance there is trust, but I think there is broad trust and the bill attempts to foster that. We are reluctant in the bill to put, as I say, penalties for employees that would be seen as so restrictive that one would not want to exercise one's responsibilities.

The construction industry: I think you heard during your hearings from the employers' side some significant concerns about the bill and yet construction is a very inherently, almost, dangerous workplace, so we are once again trying to balance the recognized needs of the employer community, but having given rights to individuals in the construction industry to guarantee their safety.

As I say, I recognize that we will find on both sides some concerns about the bill, and the construction industry, I gather, in the hearings was perhaps one of the more vocal, but in the end I think all of us have to satisfy ourselves that we are going to have a bill here that improves health and safety in that area.

On a couple of areas that are not touched on, and we will perhaps get into that later on, I know that the shipbuilding one came up. It was our belief that when a ship—keep me honest here, Tim—is in drydock it is a construction project and therefore covered under the bill. The other one that the last speaker mentioned was a concern by at least one organization about trade secrets. Once again, it is our belief that concern is covered in another area, not in this bill, but we will be happy to discuss that as we get into clause-by-clause. That is why you say, "Why is it not in the bill?" Well, if it is covered somewhere else, one would not put it in the bill because it is

handled somewhere else. We realize there was a concern before the committee by at least one company about—

Mr Wiseman: By three.

Hon Mr Phillips: Pardon me?

Mr Wiseman: More than one.

Mrs Marland: There were more than one.

Hon Mr Phillips: Was there? I was aware of one in particular and maybe others followed. To both of the critics' comments, I realize the process is always difficult and perhaps there is not a perfect process. What I have tried to do is to listen to the hearings, reflect to the best of our ability the comments and concerns that were brought to the committee, where we can, and then recognize in the final analysis that on something as difficult as this we are going to have difficulty getting everyone completely agreed to the bill. But the package that we have proposed, in our judgement, balances best the needs of improving health and safety in the workplace.

Perhaps it is now time to move on to clause-by-clause.

The Chair: We have today, Monday and Tuesday to do this in committee. At a rough count we know there are 35 sections to the bill itself and I count roughly 55 amendments, combining just the government amendments and the NDP amendments.

On a procedural matter, we have all the amendments from the official opposition and the government, and the clerk is integrating the explanatory notes with the various amendments. We do not yet have the Conservative amendments and I wanted to ask Mrs Marland if she wants to present them now, because if we are going to integrate them with the package we need to have them.

Mrs Marland: We will just have to proceed. Mine are not complete yet.

The Chair: All right. We will proceed.

Mrs Marland: They should be here momentarily.

The Chair: We will proceed to the bill, clause-by-clause. We are ready and we must deal with every section.

Section 1:

The Chair: On section 1 the first amendment is the government amendment, which would come in after the part that is in the bill now, so perhaps we could deal with section 1, subsection 1, sub 1 and 1a. Shall they stand as part of the bill? Are you with me?

Mr Dietsch: I am sorry.

The Chair: Yes, I know this will be awkward at times but we are dealing, first of all, with section 1, subsection 1, then small 1 and small 1a, and then after that we will deal with the government amendment which says that paragraphs 1 and 1a of section 1 of the act be renumbered.

Mr Wildman: Then there is an NDP amendment.

The Chair: Then 1b added. Well, perhaps we can get a motion to move the government amendment first.

Mr Dietsch: I move that section 1 of the Occupational Health and Safety Act, being chapter 321 of the Revised Statutes of Ontario, 1980, is amended by renumbering paragraph 1 as paragraph 1b and by adding thereto the following paragraphs:

"1. 'Agency' means the Workplace Health and Safety Agency established under Section 10."

Mrs Marland: That is not the first government amendment.

The Chair: I am sorry, Mr Dietsch, there is a mixup here.

Mr Dietsch: I am reading in accordance with the bill.

The Chair: The first amendment I have in front of me deals with subsection 1(1)

Mr Dietsch: That is what I asked, whether you were going to deal with the government amendments to the bill then.

The Chair: Yes. That is the first one I have in front of me.

Mr Dietsch: Okay.

The Chair: Mr Dietsch moves that paragraphs 1 and 1a of section 1 of the act, as set out in subsection 1(1) of the bill, be renumbered as paragraphs 1a and 1aa and that the following paragraph be added to section 1 of the act:

"1. 'adjudicator' means the occupational health and safety adjudicator appointed under subsection 10g(1)."

Members have heard the amendment by Mr Dietsch. Any debate on the amendment?

Mr Mackenzie: Could we have an explanation from the minister as to just what this means and does.

Hon Mr Phillips: You will see throughout our amendments that we have been interested in finding a mechanism to deal with appeals around the Occupational Health and Safety Act. Currently we have an appeal mechanism within the ministry. What we are suggesting here is that we

set up an adjudicator where appeals can go to that adjudicator.

We also see that adjudicator handling a couple of other responsibilities. Later on we will get into the right to stop work and the development of criteria to define companies where that should exist. We see that adjudicator having the responsibility for the final determination of that. It is a move to set up a somewhat more independent appeal mechanism. Is that a fair comment?

1050

Mr Millard: Yes. To amplify just a bit, we intend, through the amendments, to have the present functions of the director of appeals, with your unanimous consent, moved over to this function. We intend to have the disciplinary function with respect to "exercised or failed to exercise the stop-work authority recklessly or in bad faith" moved to this adjudicator, and adjudications with respect to whether an employer has failed to protect the health and safety of workers, and thus incur one of the two remedies, a unilateral stop work or the inspector in the workplace at the employer's expense.

Mr Mackenzie: This appointment is to be made by—

Mr Millard: By the Lieutenant Governor in Council.

Mr Mackenzie: Is there any consultation or any process in arriving at the decision as to who the adjudicator is?

Hon Mr Phillips: Not in the act.

Mr Mackenzie: I realize it is not in the act. I am just wondering if there has been any discussion on it.

Hon Mr Phillips: I think the recognition is that it is a position that needs to have the confidence of the parties, but it was not planned within the act, I guess. It is a formal consultation process.

Mr Wildman: I realize that this is just a definition, but this is a significant addition and change, I believe, in the later section, as Mr Millard indicated through the chair. I am wondering, if this is an order-in-council appointment and the adjudicator is to be independent of the minister, why that is not included in the definition in some way, the statement that the adjudicator will be independent, unless that is in subsection 10g(1). Is it?

Mr Millard: It is. I am sorry, Mr Chairman, it is in 10g(1).

Mr Wildman: Then obviously we will have a major debate when we get to 10g(1), and I do not intend to engage in that debate now, other than to say—is section 6d one of the amendments? Is that what we are looking at in 10g(1)?

Mr Millard: Yes.

Mr Wildman: Okay. I am looking at that. It indicates the Lieutenant Governor in Council appointment, but I do not see where it says that the adjudicator is independent of the ministry, unless that is just inferred from the fact that it is a Lieutenant Governor in Council appointment.

Hon Mr Phillips: Maybe legal counsel can comment on these, or you can.

Mr Millard: You are quite right. There is no specification with respect to that section in the bill, with respect to its independence from the ministry, except that it is appointed by the Lieutenant Governor in Council and does not have its reporting relationship, as is now the case, with the director of appeals to the deputy minister to the Ministry of Labour. So we are trying to make it independent inasmuch as the present director of appeals reports to the Deputy Minister of Labour and is in fact a director, has to be a director of the occupational health and safety division by virtue of the way the act is read. A number of concerns, I think very legitimately, have been expressed that that cannot be seen to be a fundamentally fair process if we in fact are issuing the orders and then they are appealable to someone within our division, and that is the reason.

Mr Wildman: I understand, in looking at the amendments, that the adjudicator's decision, when there is an appeal, will be final.

Mr Millard: As the decision of the present director of appeals is final, and it can be challenged through judicial review.

Mr Wildman: So in other words, if someone did not like the final decision, that individual or group could indeed appeal to the court, but there would be no process where an individual or group could appeal to the cabinet, for instance, over an adjudicator's decision?

Mr Millard: No, it is final and the decision can only be challenged before a judicial review and that opportunity to challenge the decision would be equally applicable and available to any one of the parties, whether it be an employer, an employee or the Ministry of Labour.

Mr Mackenzie: That is interesting.

Mr Wildman: Okay, fine. Thank you.

Mrs Marland: It is hard to discuss this without discussing the other amendment, but if we are discussing the adjudicator, I want to ask if the delegation prerogative is new in this position. You have just said that in fact the position is similar to the position held now by the director. In any case, I am looking at subsection 10g(2) where it says "the adjudicator may delegate in writing any of his or her powers or duties, subject to any limitation or condition set out in the delegation."

What I see that saying—and I guess this is premature, because we are not at this amendment, Mr Chairman, but since we have already referred to it. But the fact is that we are dealing with an appointment of the Lieutenant Governor in Council of the adjudicator. Then when we read further on, we find that the adjudicator may delegate his powers or duties just in writing, so then we get further removed from who is actually going to have that power. It is obviously a pretty powerful and responsible position. Are we happy to allow the delegation to go on down the line without our knowing who it is who is going to be ultimately making the equivalent decisions of an adjudicator?

Mr Millard: If I may, the delegation authority—and let me clarify at the outset that this person, he or she, will be considerably different from the director of appeals that is now in the act inasmuch as that director now reports, ostensibly through my division, to the deputy minister, and that of course will not be the case if this amendment is accepted.

Let me say as well that the present director of appeals has the authority to delegate her or his authority but only within the confines of the authorities that are laid out in the act. I stand to be corrected by legal counsel Kathleen Beall, but I would say that the delegation authorities that are given to the adjudicator are simply for that person to be able to administer what is likely to be a fairly large workload within the confines of the appointment that will be by the Lieutenant Governor in Council, and thus I would say that person would have no authority to delegate to someone who exercises a function within the administration of the Ministry of Labour.

Ms Beall: Any delegation would be subject to whatever the limits are within the delegation, and I assume that a person who is going to be chosen as the adjudicator, as outside the ministry, will do his delegation within the confines of his appointment.

Mrs Marland: Still outside the ministry? Because, Mr Millard, you said that this person—I

think you used as an example the person who would decide whether an inspector would go in to a site at the expense of the employer.

Mr Millard: Yes, that is one of the functions.

Mrs Marland: I do not know where we get to discuss that, but I think that government inspectors should not have to be paid for by the employer, but that is another subject.

Mr Millard: I think we will discuss that.

Mrs Marland: Thank you.

1100

Mr Wildman: Just one other small thing. I guess it comes from my background as a member of the teaching profession, but it is a rather strange way of doing a definition, to basically say that an adjudicator is an adjudicator, which is what your definition says.

Interjection: Is there a reason for that? I guess that is the legal language that is required.

Ms Beall: I hate to say that the final wording was drafted by legislative counsel's office. I would leave it to them to know why they defined an adjudicator as an adjudicator.

Mr Wildman: If I had asked a student to define the term "adjudicator" and he had written back to me, "Well, an adjudicator is an adjudicator," I am not sure I would have accepted it.

The Chair: Mr Wildman, are you satisfied with that?

Mr Wildman: No, I am not, but I guess that is—

Ms Hopkins: The definition of adjudicator is done in the usual legal way that these are done. It specifies that it is not any old adjudicator but it is the adjudicator that is going to be appointed by the Lieutenant-Governor in Council under the new section of the bill.

Mr Dietsch: So it outlines the realm of his duty, of responsibility, as opposed to a dictionary definition of an adjudicator.

Mr Wildman: An adjudicator adjudicates.

Mr Wiseman: Aren't you glad you asked?

Mr Campbell: That is why we have lawyers.

The Chair: All right on that? Any further debate on Mr Dietsch's motion? Shall Mr Dietsch's motion carry?

Motion agreed to.

The Chair: That takes us down to paragraph 1(1)1a. Shall it stand as part of the bill as amended? Carried.

All right, let's move through then to the NDP amendment. But before we get there, we will

pass the other sections of the bill, or defeat them, whatever the case may be. Subsections 1(2), (3), (4), (5) and (6): Shall they stand as part of the bill? After that, the NDP amendment would drop in. All right? Is that agreed? Agreed.

Mr Wiseman: Are we on page 2 now?

The Chair: Yes. Which section of the bill?

Mr Wiseman: It is the one at the top, subparagraph (iii), I guess, where it says "a person who holds." I just want to be clear here on this and a couple that follow this that if a logger has the timber rights and he gets someone in there on a contact basis to cut the logs, who is responsible, the fellow who owns the timber rights or the person he hires at so much a log or so much a thousand or something?

I understand that becomes a problem with some people, and I think the chairman knows of one, I know of one or two, where the fellow owns the timber rights. He farms it out to someone else. Then if that person is hurt on there, he says: "You are your own general contractor. You have to look after your own worker's compensation payments" and all the rest, even though he may have thought that he was working for the fellow who held the timber rights.

I just wonder, in there, how we are going to correct something like that or if there is a way we can correct it by the wording so that it is spelled out to the people that either they are responsible for their own carrying of the workers' compensation or—are they working for the fellow who owns the timber rights? I do not know whether I explained it as well as maybe the chairman.

The Chair: I reinforce what Mr Wiseman is saying, that in some cases you could have both. You have an employer who has a timber licence, and working for that employer, contracted out, is somebody who owns a skidder and has people working for him and does the job. Here, both are considered to be the employer, the one who holds the licence under the Crown Timber Act and the person who is the skidder operator and does the logging in the bush. Could you clarify that for us, Mr Millard?

Mr Millard: Yes. The licensee here will be considered to be the licensee under the Crown Timber Act, and we have had those discussions with other ministries that administer that act. It is entirely analogous to the way we administer the Occupational Health and Safety Act for construction, where the constructor is the employer, and the constructor has a number of contractors on any any given project. Those contractors are held directly accountable under the act as the immedi-

ate supervisor and share in the employer responsibilities. In the case of construction and in the case of forestry, the licensee will have the obligations of the employer to co-ordinate the activities of contractors on the timber licence area.

Let me hasten to add that this has no implications and has no legal implication for who will be responsible for WCB assessments. That debate will continue and that debate will continue with respect to the applicability of the Workers' Compensation Act to employers. I do want to make it clear that this does not have legal implication for who pays WCB assessments. That is a debate that is ongoing within the administration of the Workers' Compensation Act. You will know that not too long ago they had a report submitted to them by a labour and management team, and this does not have implications for that.

Mr Wiseman: Just to clarify for me then a little further on, I understand a contractor on a construction job site will be held responsible for setting up the occupational health and safety reps in there on the job, and you will be held as the person in charge of the whole construction site. If the person holds the timber rights, why could not the same thing apply to him or her, that he or she is responsible to make sure—because it is connected through the workers' compensation and so on—that those were paid so that employees working there would be covered. Some of these people who take these jobs from the person who owns the timber rights feel that they were working for the fellow with the rights and when they had an accident—it took them a year now as to who should have been paying workers' compensation. If something goes wrong, is a general contractor not responsible for the subs that he or she hires on a job like that?

Mr Millard: I think that is exactly the way we are trying to administer this Occupational Health and Safety Act. Subparagraph (iv) that says "a person who undertakes all logging on behalf of a person described in subparagraph iii with respect to the licence" means in fact that the licensee has contracted out the whole operation in its entirety to one contractor, so that one contractor will have the opportunity to co-ordinate all of the health and safety activities in that licence area.

You will know, as well, that in a number of licence areas a number of the activities are contracted out to individual independent contractors within that licence area, very much as is the case in construction. Although they may not work entirely cheek to jowl, as they do in

construction, they do work very closely. The actions of one contractor can affect the health and safety of the other contractor's operation. There needs to be co-ordination of that, and that is why we propose to have the licensee in that case, just as we do with the constructor on a large project, act as the employer. That is the way we are trying to administer the act.

1110

Mr Wiseman: So the person who owns the right is the one who is held responsible—is that right?—even though he may job the whole—with a lot of them, I know, cutting is one, the skidder maybe is another and the loading the trucks is another and so on.

Mr Millard: Exactly.

Mr Wiseman: What you are saying is that the person who holds the right is responsible for setting up the health and safety representatives on this.

Mr Millard: Yes.

Mr Wiseman: Hopefully, you will take it one step further, that later on, in workers' compensation which is another part of yours, they make sure that the workers' compensation is paid on those employees, that they would make they did it that way or whatever, but that those people out there are left holding the bag.

Mr Wildman: This is an important issue that has been raised by my colleague. I would like to try and put it in the context of an actual case, an example, to see if we can deal with that. We have a situation where a pulp and paper mill or a lumber mill owns the licence. They have the licence from the Ministry of Natural Resources for logging on crown land, but they do not have their own employees doing the logging; they contract that out. In other words, they might, as you say in subparagraph (iv), contract with one large contractor. In subparagraph (iv) it makes it clear that this contractor would be the one who is responsible.

Mr Millard: The employer, yes.

Mr Wildman: He would be the employer. Now what happens, though, if that contractor jobs to a whole bunch of people, where you have operations of two or three men. One guy owns the skidder and he has a cutter working for him and maybe somebody else who is trucking for him. So the person mentioned in subparagraph (iv) is jobbing to these jobbers. Is the owner of the skidder, who is employing the other two guys, considered an employer or not in this situation?

Mr Millard: In that situation, the latterly described jobber would not be the employer. The person who had contracted the entire operation from the pulp and paper mill licensee would be the employer.

Mr Wildman: One other example then: We have a situation where an individual has a licence from MNR—I know of a couple of cases in my own area where this is the case—but has no employees at all. They do not own a mill or anything. They just have a licence. Whether they should or not is another issue, but they own the licence. They have no employees and they job everything on their licence. In that case, if there is a number of small jobbers working for that licensee, the licensee is still considered the employer?

Mr Millard: Yes.

Mr Wildman: If that is the case, how does that kind of employer fulfil his obligations, if he has no employees under the act?

Mr Millard: Fulfil his obligations with respect to the employer?

Mr Wildman: As an employer.

Mr Millard: I have had a number of discussions with representatives of the forest industry and representatives of the forest workers on this one. That person who holds the licence will in fact have to find a way to exercise the responsibilities of an employer under this act, the same as a constructor does on a large project, because sometimes a constructor can have a large construction project without having very many employees and may in fact only have one general manager on that project.

Mr Wildman: Yes. When I said this kind of licensee has no employees, he probably has a bookkeeper, a secretary or office staff, but he does not have employees out in the field.

Mr Millard: Understood, and we will be expecting that employer to exercise the responsibilities of an employer with respect to this act in those situations.

The Chair: Are we ready to—Sorry, Mr Dietsch.

Mr Dietsch: Are you as far as subsection 1(6) of the bill?

The Chair: Yes, go ahead.

Mr Dietsch: During the public hearings process, there were a number of individuals who appeared before the committee who were concerned with respect to the duplication of jurisdiction between the federal and provincial governments with respect to ships under repair. At the

last presentation or the second to the last presentation in Thunder Bay, in their presentation presented to the committee there was a letter of understanding. I guess my question is, can these people be assured that there is no duplication of jurisdiction between the federal and provincial governments, to lessen the confusion as to who is responsible and when, under the act, the way the amendment is couched.

Mr Millard: I am sure the honourable member would like me to be able to say yes. I cannot say yes unequivocally because the matters of provincial and federal jurisdiction of course take a great deal of sorting out. We are convinced that as it relates to our ability to inspect workplaces on those ships and drydocks, this will restrict our application of the Occupational Health and Safety Act to the area where we do have jurisdiction.

We have created a committee with our own inspectors and our own managers on that committee. We will have to deal with the entire question of jurisdiction, whether it be ships, whether it be grain elevators, whether it be transportation, interprovincial transportation. We intend to sign a memorandum of understanding with the federal government that will make it clear where the Occupational Health and Safety Act applies provincially and where the Canada Labour Code applies.

I am afraid it is the only way those jurisdictional issues can be resolved, the same as we have resolved jurisdictional issues with respect to uranium mines in the province. We do have a memorandum of understanding, an agreement with the federal government that lays out its responsibilities and ours and it is entirely clear to the employers. Some of these areas that I mentioned are not as clear to employers. For instance, interprovincial transport is an area where we are still clarifying jurisdictions and we will have to clarify that jurisdiction here, and we are working on it.

Mr Dietsch: Can you give some indication when you foresee something like that might be possible, that is being worked on now?

Mr Millard: I think it is quite possible within six months. These matters do require a lot of time because you have work through the Department of State, the Department of External Affairs, which obviously have similar agreements with offshore countries with respect to these sorts of matters. They want the provinces of course to dovetail with them. I would think six months is a reasonable time frame and I can say to you that I think the outcome will be that while a ship is in

drydock it will come under provincial jurisdiction, and when it is at sea, as it were, on the Great Lakes, we hope we can make that federal jurisdiction because they have an inspection capability in that area that we do not have.

Mrs Marland: We are discussing inspections now. Is that right?

The Chair: No, we are discussing the section dealing with "a ship being manufactured or under repair shall be deemed to be a project."

Mr Wiseman: When we were in Ottawa, we had the president of the ship builders in to see us. They mentioned that their definition of it, as they understand it, was that if a boat was being built, once the time comes when it is christened or launched, even though it may be tied at the dock or it may be up for repairs, it is a federal responsibility. I understand what Mr Dietsch was saying when we were in Thunder Bay, the other day—they had mentioned that there had been a couple of court cases that I understand, if I can remember correctly, upheld that ruling.

I think the boat builders felt that worked well for years, with one thing and another, but I just wondered for the benefit of those employees who were kind of caught in the middle in Thunder Bay whose jurisdiction it was under. They seem to be left in the lurch. Mr Dietsch had asked you when you might have a memorandum of understanding. I think something as important as that should be well down the negotiation tube and hopefully straightened out whenever the bill is proclaimed, so that those people are not left hanging out there without a clear definition because we will muddy the waters even more if we do not have it in place by then. Is it possible to have that in place that soon?

1120

Mr Millard: I would hope so. Our discussion here relates to a ship under construction or repair. The court case that is referred to referred to a ship that was tied up at dock as opposed to a ship being under repair or being constructed. Our responsibility is to protect those workers and we want to protect those workers, to make sure they are adequately protected when a ship is under construction or repair in drydock and that is where we are directing our efforts, to the construction or repair.

Mr Wiseman: The construction I think is already there. It is just the repair.

Mr Wildman: I understand what you are saying, but one of the issues that was raised before the committee was what happens when a ship is being repaired while it is in service? In

other words, it may be a laker and it is on the Great Lakes, but construction workers have been taken from the drydock on board the ship to do work while it is in service? According to your view, they would then come under the Canada Labour Code if they were doing work while the ship was at sea, to use your terms.

Mr Millard: I am hoping our memorandum of agreement will be explicit in that respect because it needs to be for the sake of the workers.

The Chair: Are there any other comments on section 1 of the bill down to the end of what is printed in Bill 208? There is an amendment after that. Shall subsection 1(1) through to subsection 1(6) carry as part of the bill?

Mr Wiseman: Could I just ask one on subsection 1(3) of the act?

They had mentioned too that the coast guard made good inspectors. I noticed you are kind of defining that a little more, are you not, in subsection 1(3)? They thought the coast guard knew a lot about vessels and were better at inspecting what repairs went on and if it was safe and one thing and another. I believe I am saying that right.

Here, will it be our people and will they be trained, if you get that through, to understand boat building and the hazards of different things like people who are dealing with it all the time like the coast guard people? Do you have inspectors to do that?

Mr Millard: Certainly, let me not quarrel about the expertise of the coast guard to investigate and look at construction and repairs being made in terms of administering worker health and safety, but we do have what I believe to be a highly trained inspectorate and they are trained in three general disciplines. We have inspectors trained for construction, inspectors trained for mining and inspectors trained for the industrial sector.

Within construction we have people trained specifically for window washing, which is quite a dangerous activity. We have people trained specifically for diving. So we do sub-specify in terms of our training and I would think where we are going to be inspecting ships under repair and construction, we would have a specific training course with respect to construction and repair techniques as they relate to a ship. We do that kind of specific training. That would have to be our undertaking.

Mr Wiseman: It is something new. It is something you have not had to do up until now.

Mr Millard: But we have. We have tried to do it and we have come in to conflict with the jurisdiction and that is exactly why we are trying to sort it out here. We have been inspecting some of those kinds of activities and have found ourselves once again meeting a jurisdictional argument. We are taking two tacks. We are giving ourselves the authority where it is under construction or repair and we are also entering into discussion on the memorandum of understanding with the federal government.

Section 1, as amended, agreed to.

Mr Mackenzie: I move that the bill be amended by adding the following section:

"1a. Subsection 3(2) of the said act is repealed."

As the son of a farm labourer I regret to make this ruling. Since that section is not part of Bill 208, the amendment is out of order. You cannot amend this bill unless it is referred to in this bill.

Mr Wildman: You have just proved you are a son of a farm labourer.

The Chair: I regret that.

Mr Mackenzie: Just before you pass by it then, the reason it is there is fairly obvious. We certainly had a lot of reference to it and if I remember correctly in the hearings, forestry and agriculture were two areas where injuries and accidents were going up. Strange as it may seem, it is certainly one of the more dangerous occupations today and we also have a number of situations that have surfaced over the years.

I have still never got over the fight we had and the fact that we could not get this government to move in terms of classing mushroom factory workers as farm workers, even when they were on a three-shift operation, a moving assembly line and punched in time cards. When they were organized, they were denied certification because they are farm workers, which is totally ridiculous.

I do not know then how we get at something like this. We are amending the act with Bill 208 and the act does say, "Except as shall be prescribed and subject to the conditions and limitations prescribed, this act or a part thereof does not apply to farming operations." How do we eventually get covering farm workers and dealing with obvious loopholes in our health and safety legislation?

The Chair: I understand your point and it is well put, but unless there is reference in Bill 208 we cannot amend the original bill that this bill is amending.

Mr Mackenzie: I wonder then if I can ask the minister if he is prepared to make such corrections or move such an amendment to give some protection to workers who now do not have it?

Hon Mr Phillips: The whole area of safety on the farm is an area of interest to us, obviously. There has been a committee that has been looking at that issue. Frankly, because it was not part of Bill 208, I do not think there has been a thorough opportunity for that issue to be broadly canvassed. It was the subject of some input to the committee, but I think many people who have an interest in it never went to the committee because it was not seen as part of the bill.

I think in terms of dealing with it, it may be somewhat difficult now if we recognize that normally we would like to have some broad input. The ministry is looking at the whole area of farm safety. We have the committee's work that I think has been useful but now needs to have some broader discussions. In terms of having that discussion take place before we deal with Bill 208, I think is going to be impossible.

I guess as an undertaking we certainly recognize that there is a need to look at safety on the farm and it is our intention to be moving forward with that committee's report and to be looking at how we can improve safety on the farm.

1130

Mr Mackenzie: I will not prolong it, but just as some final comments, safety on the farm was certainly part of it. I will admit my frustration was the issue, and that, I might say to the minister, is something we have raised a number of times during Labour estimates and a couple of times in the House, the fact that the workers themselves could not understand why, on one side of the road, you had a Campbell's soup plant where they were covered and, on the other side, you had a three-shift moving assembly line, punch-in, punch-out, 24-hour mushroom farm but could not be covered because they were classed in that operation as farm workers. It is just totally ridiculous.

We have had an indication—no promises, I will admit—but almost what you have said, that it is something they were aware of during previous estimates of the Ministry of Labour. It was an ideal time to do something about it in this bill, but we have not.

But I guess I make my final appeal again: When are we going to see that 130-odd workers in a mushroom farm like that are covered as well, those general farm workers?

Hon Mr Phillips: I will just say I appreciate the problem and it is an issue we are addressing.

The Chair: Okay.

Mr Wildman: We are just asking that they no longer be kept in the dark and fed you-know-what.

The Chair: Thank you for that assistance. Shall section 1 of the bill, as amended, carry?

Section 1, as amended, agreed to.

Section 2:

The Chair: Moving along at the reckless pace we are, shall section 2 of the bill carry?

Mr Mackenzie: No amendments to that?

The Chair: I have no amendments to that, no amendments to section 2 before me. Does that carry?

Section 2 agreed to.

Section 3:

The Chair: Shall subsection 3(1) carry? There are no amendments to that. Carried.

Now, subsection 3(2) has amendments and we will go with the New Democratic Party motion first.

Mr Mackenzie moves that subsections 7(6) and (6a) of the act, as set out in subsection 3(2) of the bill, be struck out and the following substituted:

"(6) Unless otherwise required by the regulations or an order by an inspector, a health and safety representative shall inspect the physical condition of the workplace each month.

"(6a) Unless otherwise required by the regulations or an order by an inspector, a health and safety representative shall inspect the construction site as frequently as determined by the health and safety representative and constructor."

Do you wish to speak to that, Mr Mackenzie?

Mr Mackenzie: If there is an area I believe the current legislation may move us backwards, it is in the inspection section. I think the frequency of the inspections was an issue that was raised time and again during the course of the hearings, and I would like an explanation for the current situation as far as the ministry is concerned.

Hon Mr Phillips: I will ask Mr Millard to comment on it in more detail, but it was never our intent to move backwards from where we were currently. I think the intent was that there may be workplaces where it is impossible to conduct a full inspection each month. There may be other places where it is completely feasible to do it monthly. So we were actually trying to enhance the frequency of inspections by saying a portion must be done at least monthly. It was never the

intent that it be moved backwards. That was in recognition that there may be certain workplaces where a full inspection of the entire workplace each month is not feasible. Tim, I do not know whether you want to add anything to that or not.

Mr Millard: I do not think there is much I can add. The present act says that "The members of the committee who represent workers shall designate one of the members representing workers to inspect the physical condition of the workplace not more often than once a month or at such intervals as a director may direct."

We had hoped to create a minimum frequency in this amendment, create a minimum frequency in the bill for inspections, and the minimum frequency would be once a month. We wanted to ensure that at least the entire workplace is inspected during the course of the year, so we had another subsection that said, "And those monthly inspections shall be conducted in part or in whole so that the entire workplace is inspected during the course of a year." I think very much we have improved the frequency, trying to improve the extent of the inspections.

I will say that with respect to administration of the present act and the way it has been interpreted in the workplace, inspecting the condition of the workplace did not and has not been interpreted as meaning the entire workplace. And where there is, at the present time, the practice of people inspecting the entire workplace on a monthly basis, where that is feasible, that certainly goes well beyond the law, and we encourage that. It of course is not feasible in some workplaces to inspect the entire physical area of the workplace monthly, so we do not require that. But we are trying to require at least the entire workplace be inspected during the course of a year. If you look at a 20-storey building or whatever, that might make a lot of sense.

I would hope that those people—and I would think that those people who are already in the process of doing broader inspections and covering the entire workplace in a month if they can—would continue to do that, because they have gone well beyond the existing act in order to do that, and I would hope that this amendment in the bill in no way diminishes their agreement to do that. That was the rationale.

Hon Mr Phillips: I guess it was not the intent to cut down on what already takes place. At the same time, I think we would have difficulty in requiring a complete inspection each month. So we have a wording problem here, because it was not our intent, as I say, that there be any reduction in inspections that currently take place.

Mr Mackenzie: There are many collective agreements, as you know, that do call for a monthly inspection, and you are right, that can continue. But that also could mean a lack of inspection in many operations—and they can be big operations as well—if they are limited to only part of the workplace in a month. It literally can take a full year to—I have difficulty in knowing why you would not move to the complete inspection when it does exist in so many collective agreements.

Hon Mr Phillips: The challenge is that there are workplaces where it would be impossible to conduct a complete inspection each month. As I say, we believe the wording of the bill does not move backward, it moves forward by saying "at least monthly."

Mr Mackenzie: Part of the bill.

Hon Mr Phillips: Yes.

Mr Mackenzie: That can be very, very restrictive, minister, as I am sure you know.

Mrs Marland: I have a lot of difficulty with this section because, if there is one thing that I learned travelling the province on Bill 162, which was only reinforced 100 per cent by travelling the province on Bill 208 for the past six weeks, it is the fact that where we have bad workplaces—and I want to emphasize up front that it is like everything else; we have good and bad. Certainly in this province the majority of the workplaces are good. They are well managed by responsible employers. But, my goodness, where we have the exception to that, it borders on criminality, in my opinion, in terms of some of the examples that were given to us.

The problem with Bill 208, and this section emphasizes it, I think, is that it paints everybody with the same brush. We have a situation where we have something in the bill here which obviously is totally impractical, because from the horrific examples of workplace injuries and, worse, workplace deaths that we heard about this year and last year, we know that a large majority of those tragedies could have been avoided if the problem had been identified.

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We also heard that a large number of those accidents happened where there had not been inspections for a very long time. In fact, we will have records in Hansard where it was said that there had not been an inspection in more than a year and, I recall in one case, two years.

So it comes back to the question of, do we need more legislation, and if so, what? If we are going to just pass more legislation with more inspec-

tions—and the answer the minister gave this morning about how those inspections are going to take place was by increasing the workload of the existing inspectors.

I have to ask the question, having heard from inspectors this year on Bill 208, and we heard from inspectors last year on Bill 162, how can you increase for those inspectors a workload that today allows the existing act to be violated by workplaces around this province simply because the inspections do not take place? It is a bit like a municipality passing bylaws that are on the books but they are hollow because they are really not enforceable because nobody has the staff to enforce them.

I think it is a sham to pass a bill that says, "Unless otherwise required by the regulations or an order by an inspector, a health and safety representative shall inspect the physical condition of at least part of the workplace each month," and then the next section, "Inspections of a workplace shall be conducted so that in each 12-month period all of the workplace is inspected."

If that is going to be accomplished by increasing the workload of inspectors, to use the minister's own words this morning, then we might as well save our time and not bother passing it, because it is not going to happen. The unsafe workplaces in this province are not going to improve, they are not going to be eliminated. The violations by that minority of employers that exist today will not be stopped because of the fact that what we are saying here is unreal, it is impractical.

Furthermore, I would like the minister to tell us what he meant in December when he said, and I quote again from page 4 of his eight-page speech in the ministry handout package where he said: "We are offering specific incentives to companies that have a good track record. A high-performing workplace could be offered the benefit of fewer Ministry of Labour inspections." Now if we do not have inspections, how do we know they are high-performing workplaces? Are we going to rate a high-performing workplace on the number of accidents it does not have? How do you rate a high-performing workplace if it is not inspected?

I can tell you, from the companies that we heard from in the last six weeks that those responsible companies around this province, both large and small, that create the jobs that give the employment to the workforce in this province, the majority are high-performing workplaces and they are the people who welcome

inspections because they are proud of how they operate. They do not need government to come in with additional legislation to tell them how to safeguard their staff from chemicals. I am thinking of Dow and Dupont, whose officials came before the committee and said, "We operate a safe workplace and we don't need more government intervention, because our standards and our regulations are higher than anything the government has asked us to do, in any case."

So, Mr Minister, can you tell us, when we are talking about this section on inspections, what you meant by offering high-performing companies the benefit of fewer Ministry of Labour inspections?

Hon Mr Phillips: Maybe just to help overall in this thing, I am anxious to see if we can find some wording that reflects what we are trying to do here, which is to improve the inspection, not to move back. I think maybe we would benefit from a little bit of time just to look at how we might ensure that our wording is not doing what we do not want done, because I see there is a possibility that someone may say, "Well, the workplace inspections shall be inspected each 12-month period." Where there are circumstances where it is done monthly, we would not want people to now say, "Well, we'll just do it annually." Similarly, if on a construction site it is interpreted that it should only be done once a month, as we all know that with the pace of construction projects, that may not be realistic.

I do not know how you normally work, Mr Chairman, but it may be worth while setting this one aside for a little while, for a day or so, while we look at it.

Mrs Marland: Well—

Hon Mr Phillips: Then I will get back to your comment, but just to Mr Mackenzie's amendment.

Mrs Marland: All right.

Mr Mackenzie: If the government can see fit, I think it would be useful, because there is a perception, not just mine I can tell you, that this is one area where we have not had any progress. That may be a perception, it may be a reality, but if there is some wording we can take a look at, it would be useful.

The Chair: May I suggest to the committee that if there is an agreement to stand down this part of the bill, there is no sense debating it at this point then.

Mr Wiseman: There is a clarification.

Mrs Marland: I had the floor last—

The Chair: Yes, you did.

Mrs Marland: —and asked the question. First of all, I would agree to standing it down for any improvements that the government wishes to benefit us by, but I do need the answer to my question from the minister, because it does not matter whether the inspections are going to be once a month, six monthly or biannually, which is six monthly, by the new government wording; I still have to know what he means by the exemption process for high-performing workplaces.

Hon Mr Phillips: Just so we are all clear on what this refers to here is not our inspectors; it is the workplace parties. I do not mind debating about our inspectors, but we are talking here about the workplace parties inspecting.

Mr Wildman: With respect, Mr Chairman, I have—

The Chair: We are still debating Mr Mackenzie's amendment. There has been no agreement by the committee yet to stand down the amendment or the section of the bill, so we are still on the amendment and I have a speakers' list of Mrs Marland, Mr Wildman, Mr Wiseman and Mr Dietsch. There has been no action taken on that, so as far as I, as the chair, am concerned, we are still debating Mr Mackenzie's amendment. Mrs Marland, have you completed your remarks?

Mrs Marland: I agree to stand it down if we can get some improved wording.

Mr Dietsch: I agree to stand it down if Mr Mackenzie does.

The Chair: Okay, but there are people who want to make comments before we do that, and I think that is appropriate. Mr Wildman is next.

Mr Wildman: I just want to make a couple of brief comments, because if the amendment moved by my colleague were to be stood down, and I think we are certainly prepared to see that, I think there should be some indication prior to our doing that as a committee as to what our concerns are so that if the ministry people are hoping to respond to those concerns, they will know what they are.

If you look at Bill 208 as drafted, on page 3 of the bill, subsection 3(2), you will note that it states, "Unless otherwise required by the regulations or an order by an inspector, a health and safety representative"—that is, a worker health and safety representative—"shall inspect the physical condition of at least part of the workplace in each month."

Now, I understand in looking at the act, the change that the ministry is making is it is taking out the suggestion in the act that it be done not more than once a month and saying that it will be done once a month. In other words, you are trying to make it a minimum.

I understand that, but there are a number of problems with it. First, how do we know what is going to be done on a construction site? As I read the bill as drafted, there is no specific reference to construction sites. That is why we have moved this amendment. As the minister indicated, a construction site can change, certainly weekly if not daily, and if you are only going to be inspecting it once a month—Mr Wiseman's swimming pool might have been completed in that—I just think there has to be some kind of specific reference to construction sites that will take into account the changing nature of a construction site as the job progresses.

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Also, what is proposed in the bill is a sort of incremental full workplace inspection; in other words, you do at least part of the workplace each month. If you have 12 inspections over the year, I think the ministry is hoping that this will then cover the whole workplace and that the whole workplace must be inspected within a 12-month period.

I do not see anything in the wording of the bill that indicates there must be a different part of the workplace inspected each month. It does not say that. You might have 12 inspections in the same part of the workplace. To use an extreme example—

The Chair: Same end of the swimming pool.

Mr Wildman: We had evidence before the committee in hearings from the Canadian Auto Workers, for instance, from locals that represent very large workplaces with very large numbers of workers and they said that they now inspect the whole workplace once a month. They felt that they could do it in the kind of workplaces they have. If you are talking about some of the Chrysler, Ford or General Motors plants, the enormous size and numbers of workers involved in the different types of work sites within the workplace, then surely it can be done in other smaller and other types of workplaces. If it can be done in a very large setting like that, it can be done in others.

Why do we not require, instead of at least a part, that the whole workplace be done each month? Those two concerns: it should not be just at least a part; it should be the whole workplace

once a month, and there must be some reference to construction site.

The Chair: We have a response from Mr Millard. Do you want to do that now, Mr Millard, or do you want to wait?

Mr Millard: I just feel compelled to respond to the one suggestion that a person under this proposed legislation could inspect the same part of the workplace monthly and thus have inspected at the end of the year only one twelfth of the physical area of the workplace. The second subsection then says so that all of the workplace is inspected annually, so I do not think that could be a conclusion.

Mr Wildman: Okay, I will accept that, but I do want to point out the other side of the coin, that in some workplaces where there is a particular part of the work site that is very dangerous or potentially very dangerous, you might indeed want to inspect that particular section of the workplace each month.

Mr Wiseman: I am glad you could clarify that we are talking about the worker inspector and not the Labour inspector. On the construction site, as my colleague mentioned, we heard from those people. We heard that you and your ministry think that they are pretty good, enough that you made a booklet on them saying how they have improved their safety. We are forgetting that those people are human beings and that they have had some training.

That they are going to wait on this worker inspector to come around to tell them if there is something that might cause an accident—I think all those people who are working out there who have had some training are not going to wait until the worker inspector comes over and says, “You’ve got a problem here.” He or she will find out that they will go to them and say, “I’ve got a problem over here,” and they will come over and hopefully work it out with the general contractor or his counterpart.

As I listen, I am trying to be careful. This overall authority to this one person who may be on there to inspect—to think that he is going to be the only person is wrong. If I were doing any of those jobs and trained—some of them have said they train or try to train you and even have you sign that you have taken and read those safety books and taken the training. They have it on their record that they have that. I differ from some of my colleagues, but I really do not think we need to get into inspecting all the workplace once a month.

Let’s give those workers out there the benefit of the doubt that they are not stupid, that they are

as anxious to avoid accidents as anyone else is. They are going to bring it only if they do not get the owner to correct the situation. They could do that half a dozen times a month on a particular job if the case arises. We have everybody on that job who should be, in my opinion, an inspector of their own area, but the person we would put in there as a worker health and safety inspector I would see as being more general. I really do not think we have to have them—

Mr Mackenzie: We would not put him in; the workers would put him in.

Mr Wiseman: Well, I think we do the workers an injustice to think that they are not going to protect their own health in the area of the work that they are doing, Mr Mackenzie.

I see the person there, as I said before, to jump in if he cannot work it out with his foreman or the owner of the project. Then he calls them in. Take a general inspection once a year of the whole site or whatever it might be, but I really do not think, as I said before, that we need that and we are doing the workers an injustice by saying, “We have to have somebody see it because you don’t know what an unsafe site is that you’re working on.”

The Chair: Perhaps we could finish off this section with Mr Dietsch and Mrs Marland and then we can break.

Mr Dietsch: I will be very short. Basically, the way I understand the concern put forward by my colleague who moved the motion is that there are two factors, one being concern for the workplaces out there that are being inspected in total currently and the assurance of that kind of inspection continuing on, making sure that that happens so that there is not a diminishing of those current workplace inspections.

The other concern, as I understand it—the reason I broach these now is so that there is clarification—is in terms of total workplaces being inspected. I do not know for sure, but I would imagine, knowing that some of the workplaces in the current marketplace are of a size that this would not be possible—I do not know how many of those there would be in terms of those numbers of those particular workplaces. I think perhaps the intent of standing it down is a good one. Perhaps we can sit and wrestle with some of the wording to address as many of those concerns as we possibly can.

Mrs Marland: I was actually going to move a motion, but my learned colleague from Hamilton tells me it would not be accepted anyway.

Mr Campbell: Are you advising them now?

Mr Dietsch: Is this a new accord?

Mrs Marland: I respect the fact that the minister just suggested we set this down for a few days and I thought, well, I liked his wording, because the problem is we do not have a few days. I was going to move, with the minister here and the importance of this bill to him, that he might ask the government House leader if we could have an additional two days, but am I informed correctly that the number—

Mr Dietsch: Friday, Saturday, Sunday.

Mrs Marland: Excuse me. The number of days could only be changed by a motion of the House and the House is not sitting.

The Chair: Yes. The reference that sent this bill to this committee spelled out the times by motion in the House. We are locked in to that.

Mrs Marland: So the change can only be made by a motion in the House.

The Chair: Yes.

Mrs Marland: Are we to report this bill on the 19th?

The Chair: On the 26th.

Mrs Marland: Therefore, I could move a motion asking the minister to ask for additional time on the clause-by-clause when we go back into the House on the 19th.

The Chair: First of all, when we go back on the 26th—

Interjections.

The Chair: Order, please. When this is reported back on the 26th—

Mrs Marland: Yes, but we go back into the House on the 19th.

The Chair: Yes, but the bill is not reported until the 26th and at that point the bill will be completed by a committee of the whole in the Legislature.

Mrs Marland: I understand that, but what I am saying is that if the House goes back on the 19th, the minister could ask the government House leader for another motion to allow us more time for the clause-by-clause prior to the 26th.

The Chair: Oh, I see what you are saying. Well, anything is possible in the assembly, but I would be surprised if that would happen. There is nothing wrong with your approaching your House leader to see what he thinks about that. We cannot decide that here in the committee.

Mrs Marland: Okay; thank you.

The Chair: Is it agreed then that we are going to stand down subsection 3(2) of the bill? We have already carried subsection 3(1). So we will stand down subsection 3(2) in its entirety?

Mr Mackenzie: I would hope so, Mr Chairman.

The Chair: Is that agreed by the committee? With that, Mr Mackenzie's amendment. It does not die. It is still there until we see what happens when we deal with subsection 2 again. Because there is a government amendment to subsection 3(3) to deal with as well, is it agreed that we will adjourn now and commence again at two o'clock? All right. The committee is adjourned.

The committee recessed at 1205.

AFTERNOON SITTING

The committee resumed at 1410.

The Chair: The committee will come to order. Unless there are serious objections by members, there has been a request to adjourn at 3:45 because of some problems individual members have. Since it is not likely we will finish the bill this afternoon anyway, I thought we could adjourn at 3:45. Is that appropriate? Any problems with that? Okay, let us do that.

When we adjourned before noon, we had stood down the NDP amendment on subsection 3(2) and were about to move to the government motion.

Mr Dietsch moves that clause 7(7a)(a) of the act, as set out in subsection 3(3) of the bill, be struck out and the following substituted:

“(a) to obtain information from the constructor or employer concerning the conducting or taking of tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace for the purpose of occupational health and safety;

“(aa) to be consulted about, and be present at the beginning of, testing referred to in clause (a) conducted in or about the workplace if the representative believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid; and”

Mr Dietsch: Basically the intent of the motion is that the occupational health and safety representative be consulted concerning such tests and be present at their commencement to ensure that the results of the tests are valid. That is, in essence, what the motion is trying to reach.

Mr Wiseman: It is unclear. Are the set of amendments we were given yesterday and the group we were given today exactly the same?

Interjection: Yes, only there is a little more paper. They are integrated.

The Chair: The ones you were given now have the opposition amendments put in with them in order, so that we do not have separate piles of amendments. There are also some explanatory notes in with them.

Is there anything else on the amendment moved by Mr Dietsch?

Mr Callahan: Do I read that it strikes out the opening phrase “A health and safety representative has the power” etc?

Mr Dietsch: No, it is in addition to.

Mr Callahan: It appears to.

The Chair: Except that it starts at the little (a).

Mr Callahan: It strikes out 7(7a)(a). All right.

Hon Mr Phillips: Tim, do you want to expand on it at all?

Mr Millard: It takes the existing clause in the bill and creates two clauses, one dealing explicitly with the power of the representative. Remember, this is a health and safety representative and we will deal with the same provisions for a joint health and safety committee member later in the amendment.

It breaks it into two clauses, one explicitly to give the representative the power to obtain information from the employer concerning the taking of tests of any equipment, machine—and you can read on—“material or biological, chemical or physical agent...for the purpose of occupational health and safety.” So the tests are tests concerning occupational health and safety and it gives the representative the power to obtain information with respect to those.

Second, in clause (aa), it gives him or her the authority and power to be consulted about and also to be present at the beginning of the testing referred to above, “if the representative believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid.”

Much was heard during committee hearings about the degree and the extent to which routine testing takes place within a workplace for occupational health and safety purposes, for substances, etc, in the workplace. Those are conducted on a routine basis and this allows that health and safety representative to use his discretion with respect to whether or not he believes his presence is necessary to ensure that the procedures and the results are valid. That is the reason for this proposal.

Motion agreed to.

The Chair: We have two amendments on subsection 7(7b). We have a choice here. Can you follow this? It is a little bit tricky. We can have both motions moved and debate them together, because the only difference is 21 days versus seven, or we can have Mr Dietsch move the government amendment and then Mr Mackenzie or Mr Wildman can move an amendment to that amendment to make it seven days.

Mr Wildman: That is what I expected we would do.

The Chair: Is that what you wish to do?

Mr Wildman: Yes.

The Chair: Okay. Then let us move ahead with the government motion.

Mr Dietsch moves that subsection 7(7b) of the act, as set out in subsection 3(3) of the bill, be struck out and the following substituted:

“(7b) A constructor or employer who receives written recommendations from a health and safety representative shall respond in writing within 21 days.”

1420

Mr Mackenzie: In terms of procedure, Mr Chairman, if we wanted to move an amendment to that, the only amendment that would be needed would be to substitute seven for 21 days. Am I correct?

The Chair: That is correct.

Mr Mackenzie moves that subsection 7(7b) of the act, as set out in the government motion, be amended by striking out “21” in the last line and substituting “seven.”

You have heard the motion. What we will do now is debate Mr Mackenzie’s motion first and then, depending on the outcome of that, we will deal with the government motion.

Mr Mackenzie: I think it is a pretty straightforward position in regard to 21 days. If we heard one theme common throughout the hearings, it was that the 30 days was too long, and I think by implication you would not be in a much better boat with 21. I do not know why there cannot be an answer back within the seven days. It seems to me there are some situations where it would be absolutely essential that the workers have an answer back in seven or fewer days. I think seven days is an adequate time.

Mr Dietsch: There will, I am sure, be times when seven days is certainly not long enough. I have got to sort out which one I am debating here. We are debating the amendment to the amendment, which is seven days.

The Chair: Right.

Mr Dietsch: I think we are concerned that companies will not have an opportunity to hold the required amount of investigation or possible testing that could inevitably be required as a result of the recommendation that comes forward. It is important that we note we want to ensure that we get remedial action out of the committee process.

I think we want to make sure that the remedial action, on one hand, does not go through an unnecessarily long period of time, to be delayed; but at the same time we want to make sure that

companies have enough time within their allotment; that it does not pre-empt, if you will, things of a very minor nature; that it be under the period of time required, but certainly seven days may not be long enough in some of the instances of investigation.

The Chair: Mr Wiseman—I am sorry, Mr Wildman was next.

Mr Dietsch: Can I just point out one other thing, Mr Chairman? Under the act as it exists right now, employers are not required to respond at all. I think what we are doing is ensuring that that kind of response is out.

Mr Wildman: Your original reference to me as wise man was a description.

The Chair: I think the second one is a more appropriate description, myself.

Mr Wildman: I will not debate that either.

I understand what the parliamentary assistant is saying, in that currently there is not a requirement that there be a response and that the government is now moving to require a response within a certain period of time. There is no question that it is an improvement, or it could be an improvement if the committees are to operate properly, but I have not as yet heard any justification for either 30 days or 21 days.

We have attempted to provide a justification for seven days. A large number of delegations before the committee in the hearings said that in their view—admittedly it was largely labour who said that—seven days was adequate in nearly all cases they could think of for there to be a response. Keep in mind that we are not talking in this amendment about considerable adjustments in the workplace to be completed within seven days, if that were required, but rather the response.

If I could digress for a moment, in this House we have a rule, for instance, that if a petition is submitted in the Legislature, the government must respond within a certain period of time. If a detailed written question is submitted on the order paper, the government must respond within a certain period of time.

In some cases the government, perhaps more often than not, does not fulfil its obligation, but that is hard to understand when one considers that a response could simply be, “We are looking into this and we will respond at a later date,” which is the kind of response you often get from this government, unfortunately. But in those cases, under the rules, it is 14 days, and if 14 days is appropriate for the government to respond, why does it think there should be 21 or 30 here,

particularly when we have had so many people before the committee saying they thought seven was appropriate?

Keep in mind, in some cases, particularly when you are dealing with the use of hazardous chemicals, this could be a very serious situation. If there was a chemical being used in the workplace that was potentially lethal and there was a question raised about what its effects were and the need to eliminate the use of that chemical or to protect workers who might be exposed to it, I cannot understand why we would want to wait more than a week. After all, even in the 21 days it is possible in some extreme circumstances that a person might be exposed to the point where, if his life was not ended, he might experience long-term harm.

If someone is breathing in isocyanates, for the sake of argument, is working in an area where he is exposed to isocyanates or thinks he might be exposed to isocyanates and has raised objections to this, why would we want to give that company longer than seven days to respond and say, "Yes, we have investigated and we have determined that there is not an exposure to isocyanates," or "There is, and we are going to do this about it to protect the workers"? Depending on the sensitivity of the individual, breathing in isocyanates for 21 days could have a serious effect on the lungs and the respiratory ability of an individual, and it might in fact lead to serious health effects that would be with that worker for the rest of his life and might indeed shorten his life.

I would just like to know what the justification is for 21 as opposed to 30 or as opposed to seven. We think seven is enough, and we had a number of people come before the committee and indicate that they thought seven was more than enough. If it is a very, very complicated situation and one that is hard to analyse, a written response in seven days could indeed indicate what had been done to investigate the problem over that seven days and what the company intended to continue doing until it had determined what the exact hazard was and what should be done, if anything.

What we are asking for is a written response. We are not asking that the problem be rectified. Certainly we would like to see it rectified in seven days if that is possible, but all we are asking is that the employer be able to indicate to the workers what it has done to investigate and to deal with the issue that has been raised. I do not think it is unreasonable to expect it to be done in a week. If it is, please tell us why. Give us some

examples of why it might be and why 21 would be better.

Mr Wiseman: To make sure that the tests and everything were done properly, we have asked for the worker safety rep to be present. We are saying there may be chemicals and they may have to send them away for testing in a lab or something like that. You know, if any one of our family has been sick and you have to send something away to a lab to have blood worked on or whatever for a serious illness, you are lucky to get it turned around in 10 days or two weeks in that particular case.

I feel you want to be fair, and if you do not go through all the hoops for the health reps, they will probably be mad at you for giving them a report that is not full and accurate. I can see there may be cases when they get back sooner than 21 days, but my gosh, I do not think we should tie their hands so that they cannot give a full and accurate report just to make that seven days that we were asked for out there. Lots of us ask for a lot of things and we do not expect to get them, but I think we have got to be reasonable on this, and 21 days has certainly come down from where we were at a month or 30 days or whatever it said before.

1430

I hate to be sticking up for the government in every case, but I think we have to use some common sense on this, and this seems to be a common-sense approach to me if we are really interested in getting to the bottom of something that may be a hazard and getting full information so that we can present it to the workers and to the union or whatever. I am comfortable with 21 days, knowing the time it takes for blood tests and other tests to determine if you have a serious illness. I am comfortable with that.

Mr Carrothers: I think my colleague, my friend, Mr Wiseman is forgetting what type of situation this section would really be dealing with. He is talking about isocyanates and other immediate hazards, and I think he is forgetting the fact that other parts of this legislation would deal with that type of immediate problem and perhaps even other acts that deal with chemicals in the workplace. The types of subjects these committees are going to be dealing with and putting forward here are much more mundane types of problems that need to be dealt with, and to put on a seven-day limit—if you line up holidays, that becomes three working days—is just going to hamstring them. You cannot really expect the response to that type of problem. The kinds of things my friend brings up are going to

be dealt with in some other way completely, not through this type of procedure.

I think 21 days is a good balance. It gives time to get a response and yet is quick enough that the issue will not get buried, which I think is the concern that was being brought before the committee in the hearings, and that is that the process would just somehow end up in a bin somewhere and not ever get dealt with. It has to be dealt with within three days, which is a very quick time, and I think it is pretty reasonable. I appreciate my friend commenting at least once now that the government has some common-sense ideas.

Mr Wiseman: I said I want to use some common sense on this, too.

Mr Mackenzie: I congratulate you, also. You have lined up Mr Wiseman nicely. He is defending and arguing the government's case. I am not prepared to do that. First off, I do not think there is any evidence that it takes 21 days to respond. It may be, in some cases, that you are going to have to do some difficult testing and I think what has to be clear is that the workers know you are doing something about it. If the answer has to be that, that is probably legitimate. I do not think that would be misused, either, by the employers, very frankly, as long as they outline why it is going to take a longer period of time.

But the overwhelming evidence before this committee was that seven days would do it, and I remind you all that it is not just the 21 days; that is just to get an answer back as to what they are going to do about it, for Pete's sake, or what kind of a problem we are facing or what kind of additional testing has got to be done. You are still waiting for the action, and let me tell you, isocyanates is a good case.

What you are probably going to have are walkouts over this if they have to wait that long. I remember the difficulties and the time it took in the Libbey-Owens Ford case to get answers to it and the harassment and the intimidation some of the employees down in Lindsay went through when they were trying to prove that there was a real contamination and danger from the isocyanates. As a matter of fact, it was worse than that. Some who were contaminated and had raised heck about it ended up being fired, and it took pretty stringent union action to get them back on the job.

If there is a difficulty in coming up with the testing, I have no way of quantifying it, but I suspect in 90 per cent of the cases a company could be back in seven days without any

difficulty whatsoever. If there is a difficulty because it is going to require some extensive testing, then that can be the basis of a letter. But to automatically give 21 days when that is just to prove you are prepared to act on it, I think, is giving much too much time. Hell, we could have workers die in that time.

Mr Dietsch: I think what we are trying to do is find, within a realm of legislation, that which brings us to be able to deal with both sides of these questions. The more emergent areas of the examples that have been put forward by my colleagues will, I am sure, be dealt with within the 21-day period.

You are quite right when you say that many of the groups who put forward the initial seven-day response were basically all union representative groups. I think it is important to note that in questioning, it was their major concern that what they were interested in was an opportunity to get an answer to their concerns before the committee would meet the next time, so they would have an opportunity to make the committee work. Obviously, in the committee meeting once a month, they would have that answer. I think what the government has been trying to do is incorporate that real concern.

My colleague to the left of me here—not always to the left, but certainly today he is—made a comment with respect to being protected under other areas of the act. It is a valid one and I think we all recognize that. I think the concern is that it not be an unnecessarily long time of delay, but certainly one which is meant to be meaningful in response to the suggestions that are put forward by the committee.

Mr Wildman: Just to respond to what my friend Mr Carrothers said, I think the problem with his suggestion that there are other sections of the law that could be used in a case like possible isocyanates exposure is that you are going to then force workers, if they cannot get an answer within a week—which is, in their view, a reasonable time—to exercise their right to refuse. That is what is going to happen.

If that is what you want to happen, you want workers to say, "Okay, we're not going to know for three weeks whether or not the company is doing anything and whether or not the company has discovered if there is indeed a hazardous exposure, then because there is the possibility that there might be a hazardous exposure, I am going to have to exercise my right to refuse," then you are going to have more disruption in the production than you would if you were able to have a timely response from the employer as to

what he has discovered and what he is doing to try to determine what the hazard is and what should be done about it.

Mr Wiseman: When we said three weeks or 21 days, it does not mean the employer has to wait the 21 days. If he or she has an answer back in seven days, as Bob and Bud want, he could have it. But there are circumstances, as anybody who has been around industry knows, where it is impossible to meet those demands if you go below 21.

The majority of things that did not need a lot of lab work done would be done much sooner than that and perhaps meet the deadlines they want. But do not hamstring industry so that they cannot give the report they want or, my God, the unions will be mad at them for giving a report that was incomplete.

Hon Mr Phillips: Just so everyone is clear on the intent of this, I guess there are several things. One is we want to ensure that employers take seriously, of course, the recommendations of the safety committees and I guess our concern is if we put such a short time restriction on them that they are unable to deal thoughtfully with recommendations, one of two things happens. There is a series of written reports back that say, "I am sorry, we are going to take more time on this," or you get an answer back within seven days but it is not as thoughtful as the health and safety committee's recommendations require.

1440

That is why we tried to strike that balance. We originally had the 30 days in and then there was a recognition that the health and safety committees, as my colleague pointed out, meet on a monthly basis, and we wanted to be sure that the response back to them was prepared in time for their next meeting.

The last thing I would say is it does say—and it is obviously our expectation—that where it is appropriate to respond more quickly, it of course would be done. But as I say, the statement we are trying to make is that, for employers, it is very important that they provide thoughtful responses to the recommendations of the health and safety committees and that our judgement is that, in many cases, it takes more than just a two- or three-day period in order to prepare those responses.

Mr Mackenzie: Mr Chairman, before you move on, can you tell me if our researcher recorded the number of people who had objected to the seven days, or the number of companies

that asked for more? I cannot remember very many.

The Chair: No, I do not think so.

Mr Mackenzie: There was an almost universal request for seven. Not even of the companies, can I remember many of them objecting.

Mr Carrothers: No, the union people—

Mr Mackenzie: No, but how many companies countered? That is the point I am asking for our researcher, because I do not think there were very many before this committee.

The Chair: We expect to have the total package of summaries tomorrow.

Mr Mackenzie: I think you may have made a move here that was not even necessary. That is the only point I am making.

Mr Wildman: Mr Chairman, I would just like to point out that if it is appropriate for us to expect our research to have all this done in such a quick time, surely the companies can respond in seven days.

The Chair: Thank you, Mr Wildman. That is helpful. Are we ready for the question on Mr Mackenzie's amendment to Mr Dietsch's amendment?

Mr Mackenzie: I want a recorded vote, if we are, Mr Chairman.

The committee divided on Mr Mackenzie's amendment, which was negatived on the following vote:

Ayes

Mackenzie, Wildman.

Nays

Bossy, Callahan, Campbell, Carrothers, Dietsch, Riddell, Wiseman.

The Chair: Mrs Marland was just coming in the door and did not get here in time for the vote. I am afraid to recognize you, Mr Wildman.

Mr Wildman moves that subsection 7(7b) of the act, as set out in the government motion, be amended by striking out "21" in the last line and substituting "14."

The Chair: Do you wish to speak to your amendment, Mr Wildman?

Mr Wildman: I think the arguments have been made. This is not good enough; 14 is not good enough, but at least it is better than 21.

Mr Mackenzie: It is sort of sawing off the middle ground. We hear this conversation about the middle ground, Mr Chairman.

Mr Carrothers: Surely it should have been 18 days.

Mr Wildman: This is the fortnight amendment.

Mr Riddell: Maybe we could hear from Mr Millard or the minister as to the feasibility of that amendment.

Hon Mr Phillips: It goes back to what I said before. I do not know; I will ask Mr Millard. I am genuinely trying to find the right amount of time where employers will be required to give, as I say, thoughtful responses on a timely basis. Tim, you have had more experience with this, whether 14 days is sufficient.

Mr Millard: It is difficult for me to speak to whether 14 days as opposed to 21 days is the right number. I know what we are trying to achieve here and some of it is laid out in subsection 7(7c) of the act, which says, "A response of a constructor or employer under subsection (7b)"—which the motion is concerning—"shall contain a timetable for implementing the recommendations the constructor or employer agrees with and give reasons that the constructor or employer disagrees with any recommendations that the constructor or employer does not accept."

We are looking for thoughtful responses. We are looking for responses that contain a timetable for the recommendations. We are looking for the joint health and safety committee process, in terms of its recommendations and responses to it, not to be trivialized. At the present time we have no obligation for a response to the committee. It is absolutely fundamental that there be a response to the committee and that response needs to be in writing and it needs to be a thoughtful response.

One of the things that became clear, to me at least, during the process of the hearings was that quite a few people in workplaces hold their joint health and safety committee meetings monthly and they thought, and I agree, they need the response from the employer before their next committee. If they are holding their committee meeting monthly, I would suggest that we should have a time frame within that month's expiration.

Mr Riddell: Let me understand that. The response as you have outlined is all-inclusive. In other words, when they respond they have to indicate how they are going to rectify the situation and the time frame in which they are going to rectify it. They cannot send a letter in the 21 days, or the 14 days if we are to go along with that, simply saying, "We acknowledge your concerns and your recommendations and we will deal with them"—using Bill Davis's terms—"in the fullness of time."

Mr Millard: I think in our administration of the act and the way the act is proposed to be

written, that would not be satisfactory. In fact, that has been part of the problem with the joint health and safety committee process in the past, that those kinds of responses may have been forthcoming, and I think joint health and safety committees sometimes feel that they are shouting into a vacuum. This causes a response to be made and, I think, causes a response to be made within a very reasonable period of time.

Mr Riddell: If that is the case, then I think 21 days is probably needed if, indeed, they have to come out with a full and complete response in that 21-day period.

Mr Wiseman: Can I ask for a clarification on Mr Riddell's comment? Mr Mackenzie kind of confused me when he said that you would get the report back and then you would act after that. I was glad that Jack brought that up now. In that report that comes back in the 21 days or whatever, you have to have not only what you found in the report but you have to have how you are going to correct that. Is that correct?

Mr Millard: A timetable for implementing the recommendations, yes.

Mr Wiseman: Right in that one.

Mr Millard: In the response.

Mr Wiseman: I feel like Jack, 21 days is going to really be tough.

Hon Mr Phillips: I think the wording, if they wanted to read it, is at the top of page 4.

Mr Bossy: Just for clarification here, we talk about 21 days. Are we talking 21 days consecutive or are we talking 21 working days? There is a difference between 14 working days or 14 consecutive days.

Hon Mr Phillips: It is calendar days.

Mr Wiseman: We are starting to sound like lawyers, are we not?

Hon Mr Phillips: It is calendar days as opposed to working days.

Mr Wildman: Just in brief response, I will not prolong this at all, I understand Mr Millard's justification and his argument that the rationale for 21 days was that it should be shorter than a month to get a response in before the next meeting of the joint health and safety committee. I would just point out that 14 days is also within a month.

1450

The Chair: All those in favour of Mr Wildman's amendment? All those opposed?

Motion negatived.

The Chair: Is the committee ready for the government amendment?

Mr Mackenzie: I would like a recorded vote.

The committee divided on Mr Dietsch's motion, which was agreed to on the following vote:

Ayes

Bossy, Callahan, Campbell, Carrothers, Dietsch, Riddell, Wiseman.

Nays

Mackenzie, Wildman.

Ayes 7; nays 2.

Mrs Marland: Mr Chairman, finally, you have received about six amendments from the Progressive Conservatives.

The Chair: This is true.

Mrs Marland: The wording has been improved with the help of legislative counsel so I am having them redrafted now. You will get another set of our six amendments back shortly with the changes so that they will be appropriate, and I apologize for their being late.

The Chair: Could I go back to clause 7(7a)(b) of the act? I neglected to call for that to be in the bill. Does that stand as part of the bill? Carried.

Shall subsection 7(7c) and subsection 3(4) stand as part of the bill? Carried.

We now move to the NDP motion to add subsection 3(5). This is an addition to the bill, which is why we passed the other sections first.

Mr Mackenzie moves that section 3 of the bill be amended by adding thereto the following subsection:

"(5) The said section 7 is further amended by adding thereto the following subsection:

"(11) A health and safety representative is entitled to bring in a technical adviser to inspect and monitor the workplace to identify situations that may be a source of danger or hazard to workers and to attend meetings with the constructor or employer when mutually agreed."

Mr Mackenzie: This simply calls for the right of the workers to bring in a technical adviser or the assistance that they may need. It certainly would have been helpful in a number of serious cases that we have had around this province, including some of the isocyanate situations mentioned earlier that have developed.

Mrs Marland: At whose expense will the technical adviser be on the site?

Mr Mackenzie: If the workers are asking for it, I guess they are going to have to pay for it.

Mr Wildman: In support of my colleague, I want to also point out two things. A very large number of health and safety activists from the labour movement appeared before our committee in the hearings and many of them raised this matter because, no matter how well trained they are—and many of them are very highly trained and have a good deal of expertise in occupational health and safety issues—there still are many technical matters that few workers would have at their fingertips, particularly with the question of chemicals that are being introduced into the workplace.

Obviously management has access to technical expertise in regard to the usefulness of certain chemicals and other types of work techniques in their workplaces and, in order to assist workers, this might also be required.

Keep in mind that the amendment says at the end that this should be done with mutual agreement. In other words, the worker is not suggesting that the worker could, against the wishes of the employer, bring in a technical adviser to inspect the workplace or to attend meetings, but rather that this would be done with mutual agreement. This is part of the partnership that the minister has on many occasions referred to in health and safety. This is to assist the workers to play their role in the internal responsibility system that is at the centre of this legislation and that the minister says he and the government wish to strengthen.

Obviously, if the internal responsibility system is to be strengthened, then workers must have as much knowledge and expertise available to them as possible, certainly as much as is available to their employer. Again, I emphasize this is to be done with the mutual agreement of the employer and the worker. It is not to be done against the wishes of the employer.

Mrs Marland: I have some concern with this motion only from the standpoint that I think it adds an onerous expense to the workers. I am still not clear how it would be paid for if the health and safety representative is going to bring in a technical adviser and we say the workers are going to pay for it. How are the workers going to pay for it? And do we not have government technical advisers?

I thought the role of the government was to protect the workers as well as the workplace. What role does the government play where technical information is part of the evaluation of safety? Maybe the minister knows the answer to that.

Gerry, I was just saying that the government must play a role here in terms of where technical expertise is needed, and there is no question that there are workplaces where it is very foreign in terms of the kind of detail and expertise that is required if it is a certain type of chemical plant or other specialized industry. There is no question that it is not something that everybody is an expert on, but surely where that is the situation, our government inspectors would be able to identify exactly what the risk is relative to that particular work site, if it is a chemical or a particular process. Why does the worker have to pay for a technical adviser? Why does anybody have to pay for it, is the point? Does the government not have that expertise in specialized inspectors for special workplaces?

Hon Mr Phillips: Tim, now that you are back you can pick this up, but I think on a fairly regular basis the Ministry of Labour is involved in either conducting on our own with our staff or engaging outside expertise to conduct studies such as that. I think, and keep me honest here, Tim, that in most cases the two parties are part of the consultation in terms of the design of the objectives of the study and the process that is going to be followed. The purpose of that is that at the end, clearly the objective is that both parties, if they have been part of the design of the study, will then feel far more comfortable with the results of the study.

In terms of the recommendation—Tim, I will want you to speak to that—what the mover suggests is that it would be something that is mutually agreed between the two parties. I am curious whether there is any prohibition against that currently.

1500

Mr Millard: No. If there is mutual agreement with the employer, of course, that kind of independent advice can be brought into the workplace and that does happen. I apologize for my absence, but I think I heard the minister say that workers now will have the right to obtain that kind of information with respect to testing, that workers have the right to be consulted regarding the testing strategy, but that the worker representatives have the right to be present at the commencement of the testing. We always have the authority in any workplace, if there is a concern, to order in the Ministry of Labour and we can help with respect to any inspections that are taking place or with monitoring of the workplace.

If the parties agreed right now they could bring in independent advice, and that happens from

time to time with respect to particularly difficult studies that have to take place in some workplaces. They consult and agree on whom they want to bring in.

Mrs Marland: So that exists under the current act.

Mr Millard: Where there is mutual agreement with the employer.

Hon Mr Phillips: I cannot understand what this would do that they do not already have the right to do.

Mr Millard: Having missed the explanation of the amendment, I am sorry I am at a loss to answer that. I am not sure of any authority this would grant that is not there now, if it requires the employer's agreement.

Mr Dietsch: I guess my concern with this being in the act in this way is where the definition of "mutually agreed" falls. Does it mean mutually agreed by the committee? Does it mean mutually agreed by the employer and the worker? Does it mean mutually agreed between the company and the committee? Its being in the act creates a false impression for individuals; they expect that the mutual agreement is determined to be one way or the other. That is where I see a bit of difficulty in it, and perhaps the gentleman would give an explanation for those kinds of things.

The Chair: Mr Mackenzie, do you wish to respond to the queries?

Mr Mackenzie: Ministry of Labour staff is sometimes called on. They are overburdened as it is. The ministry currently funds our worker clinics and it has the expertise in many cases. The intent is to underline and reinforce the fact that sometimes a problem could be resolved if the workers were able to bring in technical expertise, and I think it needs underlining in many cases.

I think we had a bit of an example and I do not think it is too far afield. This would not have required anything more, probably, than a damned good electrical expert on the deal, when the worker at Gerber was refused because he thought there was an electrical danger in the situation and it ended up at the other side of the plant, another worker was asked to do the job and was in effect electrocuted on that job. If they had asked to bring in a qualified person to look at the particular situation—I am sure there are hundreds of them that arise—we may not have had that particular accident.

The minister can argue that you have actually got that right. I am not sure how clearly it is outlined if the union wants to bring somebody in,

because I can recall some of the fights at Westinghouse in Hamilton and other places where they wanted to bring in expertise and had some difficulty with it for a long time before it was accomplished.

Mr Campbell: I just have some questions on technical points. Maybe the legal counsel can answer. One is, if there were a third party not covered by an agreement, what is the liability of either the union or the company if something happens to that person when he is visiting a site that is not normally visited by people in the normal course of business, outside of the employer or the employee? I would think this is a highly dangerous kind of situation. What if an accident happened to that person while in the employ of the union in this case? If it is so remote, do not bother to tell me that.

Ms Beall: It is the kind of question that cannot be answered in the hypothetical because it would depend so much on each particular fact situation of what the relationship was between this person coming in and the people who brought him or her in and what kind of contractual relationship they had. I am afraid I cannot give an answer at such a general, hypothetical level.

Mr Campbell: Okay. My second question is on the protection of processes and trade secrets, industrial espionage and that sort of thing, that might be covered under a normal worker-employer relationship generally. If there were a third party brought in who may have had, or had, experience with another company while currently employed with another company that does a similar thing, can you answer what protection that company would have to protect its processes or trade secrets in its own plant if this technical adviser happened to have some relationship with a competitor? If that is also too general, just let me know and I will ask my question some other time.

Ms Beall: I am afraid it is also a bit too general to be able to give a definitive answer to the many different types of situations. There are many different types of fact situations where that kind of concern could arise.

Mr Campbell: But given that both those answers were general, is it, rather than a remote possibility, a fairly reasonable possibility that a situation like that could occur in either one of those two cases?

Ms Beall: I could not say either way. I really do not know whether a concern could arise in those situations or not. I had not addressed my

mind to that thought before you asked the question.

Mr Campbell: Okay. My last question is, when it says "mutually agreed," in my recollection of negotiating collective agreements "mutually agreed" sometimes has a cost implication; where you mutually agree to do something where there is a cost, it is shared. While I accept the intent, I am just concerned about that implication that is not addressed in this amendment.

I guess part of my question has been answered on the basis of Mr Mackenzie saying the union would pay for it and the subsequent information is that the government would.

Mr Mackenzie: We would accept the government paying for it too.

Mr Campbell: I appreciate that you might. I just point that out as a concern.

Mr Wiseman: I agree with my colleague Mrs Marland on the line that if it is a chemical you are dealing with, or some other examples that were given here today, and the union has some reason to believe it does not trust the opinion of the plant expert—and we were talking just a few minutes ago about whether 21 days or 14 days was long enough, and one thing and another—I cannot see that they would ever get a mutual agreement. If the plant thought that its person was honourable and the whole bit and was going to come in with something that would be fair by everybody, you are not going to get the plant to say, "Bring in someone else."

I think in that case they should go—and it would not be a cost to the union—right to the Ministry of Labour, which has that expertise as well. That would be, in my opinion, a neutral person who would come in and say what he or she thought about the situation and whether or not the expert for the plant was covering up for the owners. I cannot see any professional doing that, putting his or her reputation on the line. That would get around.

1510

Sterling said that where you may have some plant secrets that you do not want to get out, the Ministry of Labour people would certainly be sworn to secrecy in their job. They would make sure those did not get out to the opposition. I think the union would feel better having the Ministry of Labour there, feeling that it had the expertise and was neutral, and the plant would probably feel better, or the owners, that they had somebody there who was not going to give away their trade secrets, because we all know consul-

tants in certain fields work for many plants and something might slide out that should not.

I was glad to hear the deputy say that if you get a mutual agreement at the present time it is already there and they can do it that way. But the way it was put, I think there must be some mistrust or something, to have to bring another person into the act, if they do not trust the plant person who is doing this now. If you get two reports from that, if they did bring them in, then you are back to the Ministry of Labour anyway. So let's jump right to the Ministry of Labour and get the results and eliminate the time factor. If they were so worried about the time factor before, they should be in this too.

Hon Mr Phillips: It is either a nonissue or it is a very important issue. If you interpret it that both the employees and the employer must agree to whatever it is, then that already exists. If the interpretation is that the employees may bring in outside resources to do testing on their behalf without the agreement of the other party, then I think we have some difficulty, because our belief is that where we get into a situation where there is an agreement from both sides on what should be done, that is where the Ministry of Labour is best able to sit the two parties down, go over the testing that is required, go over the procedures that will be used and ensure that the testing is done.

Our worry is if both sides go off and do their own independent testing, as another member has said here already, we end up at the end of that exercise no further ahead, with the risk, at least, that both sides say: "I've got my study. You've got your study." Where is the solution here? So it is either a nonissue, if both sides agree, and I think they can do that already. If the intent is different than that, then I think we have a challenge, because our concern would be very much that, rather than a study that has the confidence of both sides, we run the risk of two different studies being done.

The Chair: All those in favour of Mr Mackenzie's motion? All those opposed?

Motion negatived.

The Chair: Shall subsection 3(3), as amended, carry? Carried.

We have already carried subsection 3(4).

Section 3, as amended, agreed to.

Section 4:

The Chair: Shall subsections 4(1) and 4(2) carry? Carried.

On subsection 4(3), we have a government motion. There is also a motion by Mr Mackenzie,

which can be treated as an amendment to the bill or as an amendment to the government motion. Presumably, if the government amendment is put, Mr Mackenzie will wish to amend the government motion.

Mr Dietsch moves that subsection 8(5c) of the act, as set out in subsection 4(3) of the bill, be struck out and the following substituted:

"(5c) The constructor or employer shall select the remaining members of a committee from among persons who exercise managerial functions for the constructor or employer and, to the extent possible, who do so at the workplace."

Mr Dietsch: The intent is really to reflect what was the intent of the legislation, that both parties should be representative of the workplace and should be familiar with the day-to-day operations that go on. Many of the presenters who came before the committee were concerned that there would be people who would be selected from some other area. I think it is our intent that there could be those exceptions where there is no management present, for example, Hydro branch offices, or technical or professional personnel. I think the intent is to exhaust all avenues at the workplace first, before it goes outside, those who are more familiar, the day-to-day operators.

Mr Wildman: Before my colleague moves the amendment to the amendment, perhaps if I ask a couple of questions and we get some explanation, we can decide whether or not we have to place the amendment.

The Chair: Okay.

Mr Wildman: The more I see of legal language, the more happy I am that I did not attend law school.

If you look at subsection 8(5c) in the bill, it says, "The constructor or employer shall select the remaining members of a committee from among persons who exercise managerial functions for the constructor or employer and, if possible, who do so at the workplace."

This amendment put by Mr Dietsch says the same thing until the word "and" and it changes the phrase, "if possible" to "to the extent possible." Can someone please explain to me the difference between "if possible" and "to the extent possible"?

Hon Mr Phillips: I will give you the intent of the wording, and then the legal people can explain. The intent was, as Mr Dietsch said, that we recognize that it is clearly preferable that both parties be the parties at the workplace. So the intent of that is to exhaust that route, but if we cannot find representatives using that route, there

may be examples where there just are not enough management people on that site and we have to go off the site to pick them up. The intent is to head in the direction of maximizing the utilization of management on the site and is therefore moving closer to your amendment. But I think we have left ourselves the legal out, where it is not possible, for them to select management from off the site.

Mr Wildman: I understand the intent that the minister is trying to get at, but for the life of me, even after his explanation, I do not know the difference between "if possible" and "to the extent possible."

The Chair: Mr Wildman, it could be that you are just not on the cutting edge of state-of-the-art rhetoric.

Mrs Marland: Listen, Mr Chairman, that is true. The third one and you are out.

The Chair: You are out of order, Mrs Marland.

Mr Wildman: In my view, there is no difference. I understand the minister is saying that the government wants to have someone in management from the workplace if possible, and he wants to exhaust every possibility in getting someone from the workplace. But in my view, the two phrases mean exactly the same thing, unless you can cite some kind of legal precedent that shows there is some significance to the words "to the extent," rather than "if." If you cannot, then it does not mean anything, and I would think my colleague would want to move his amendment.

1520

The Chair: I think Mr Millard was going to grapple with the question.

Mr Millard: I think "grapple" is an adequate description, thank you. I am not a lawyer, and I take no particular pride in not being a lawyer. Did I put it right so that I did not offend anyone?

Hon Mr Phillips: You just got out of that.

Mr Wildman: You know what Shakespeare said about lawyers.

Mr Millard: I can only speak as an administrator, and one who will be charged with the responsibility of administering this legislation. Whether or not there is a legal difference between "if possible" and "to the extent possible," I will allow the argument will continue, I am sure. As the administrator, I would like to think that if there is no person who exercises managerial functions at that workplace, I would not like the result to be no joint health and safety committee.

I would like in that case, if there is some remote situation—and there are some, as you know, where there is not a person on that site who exercises managerial functions—in that circumstance, I would like there to be someone who perhaps is not at that workplace in the management function to be able to exercise the health and safety responsibilities at that workplace. As an administrator, that is what I seek.

When it says "to the extent possible," then my direction to inspectors who will be asked to investigate these circumstances will be that the employer will have had to exhaust every possibility of having a management person, a managerial function at that workplace, be on that joint health and safety committee. That is the way that I intend to administer it.

Is there a legal difference between "if possible" and "to the extent possible"? I can only tell you the way I will administer it, and that will be by having our inspectors use that test of, "Have they exhausted every possibility?" That is the intent from an administrator's point of view.

The Chair: Mr Mackenzie moves that subsection 8(5c) of the act, as set out in the government motion, be amended by striking out "to the extent possible" in the third and fourth lines.

Mr Mackenzie: To speak briefly to it—I think we have had a discussion on it already to some extent—this amendment would ensure that—

Mr Wildman: To an extent. If possible.

Hon Mr Phillips: To the extent possible.

Mr Mackenzie: This amendment would ensure that all members of the joint committee come from the workplace to ensure that we do enforce the internal responsibility system, which is certainly key to this bill, and that it is truly internal. Where the workplace is a region—an example, I guess, is Ontario Hydro—the operative words are "who exercise managerial functions" over that region, which would mean that a senior manager for the region could be a management member. Seniority, I think, is what we are asking for.

Mr Wildman: My question is very short. One of the other purposes of this amendment is to get the government out of this conundrum by removing the words altogether, because obviously there is no difference between "if possible" and "to the extent possible."

The Chair: So you view it as a friendly amendment.

Mr Wildman: Yes.

Mr Wiseman: We have not heard from our legislative counsel. We have heard from the

ministry, we have heard the deputy on the wording in these. Could legislative counsel give us a lawyer's viewpoint?

The Chair: Only if there is new information that would be helpful.

Ms Hopkins: The change in wording from "if possible" to "to the extent possible" was something that was made to assist the administrators in working with the subsection and to give them confidence that what they were to look for was whether every possibility had been exhausted.

The Chair: So that is back to Mr Millard.

Mr Millard: That is right.

Mr Mackenzie: Who said we needed that kind of clarification?

The Chair: Perhaps those people around him did.

The committee divided on Mr Mackenzie's amendment, which was negated on the following vote:

Ayes

Mackenzie, Wildman.

Nays

Bossy, Campbell, Carrothers, Dietsch, Marland, Riddell, Wiseman.

Ayes 2; nays 7.

The Chair: We will now move to the government motion, which has already been moved by Mr Dietsch. All those in favour? All those opposed?

Motion agreed to.

The Chair: Shall subsection 4(3), as amended, carry? Agreed. Okay. We now move to subsection 4(4). We have a major government motion.

Mr Dietsch moves that subsection 8(5f) of the act, as set out in subsection 4(4) of the bill, be struck out and the following substituted:

"(5f) Unless otherwise prescribed, a constructor or employer shall ensure that at least one member of the committee representing the constructor or employer and at least one member representing workers are certified members.

"(5fa) Subsection (5f) does not apply with respect to a project where fewer than 50 workers are regularly employed or that is expected to last less than three months.

"(5fb) If no member representing workers is a certified member, the workers or the trade unions who selected the members representing workers shall select from among them one or more who are to become certified.

"(5fc) If there is more than one certified member representing workers, the workers or the trade unions who selected the members representing workers shall designate one or more certified members who then become solely entitled to exercise the rights and required to perform the duties under this act of a certified member representing workers.

"(5fd) If there is more than one certified member representing the constructor or employer, the constructor or employer shall designate one or more of them who then become solely entitled to exercise the rights and required to perform the duties under this act of a certified member representing a constructor or an employer."

Mr Mackenzie: I wonder if the ministry would go over this section once again. I want to be sure of what we are doing here.

Mr Dietsch: Probably we should break it down in a bit of step explanation so that it is a bit easier to deal with.

The Chair: There has been a request for an explanation, perhaps to go through the section and highlight the key points. Who is going to do that?

Mr Millard: I will do it.

Mr Mackenzie: With special attention on 8(5fc) too. I would like an explanation generally.

Mr Millard: Subsection 8(5f) will require the employer and constructors to ensure that unless there is a regulation deeming otherwise, the joint health and safety committees have at least one certified committee member representing people who exercise managerial function and at least one committee member representing labour. So the "at least" has been made applicable to both.

1530

Subsection 8(5fa) says that the certification requirement does not apply to a construction project that regularly employs less than 50 people and lasts less than three months. So the certification requirement would apply to construction projects that regularly employ more than 50 people and last more than three months.

Subsection 8(5fb) essentially says that the workers or the trade unions, if a trade union represents them, will select the members representing the workers who are to become certified.

Mrs Marland: On that one point, Mr Millard, there is not anywhere in there that you are addressing the unorganized workers, is there?

Mr Millard: Yes: in any workplace that is unorganized—and I stress "unorganized"—and

where a joint health and safety committee is required. So that would be any workplace with more than 20 people, excluding construction. They would require a joint health and safety committee, unorganized or organized. In the unorganized workplace, of course, there is no trade union that represents those people and so it is simply the workers who select whom they wish to become certified. So it addresses both unorganized and organized workplaces by saying "the workers or the trade unions who selected the members."

Mrs Marland: Oh, I see. Okay.

Mr Dietsch: It really sorts out the minimum and refers to who selects them.

Mr Millard: Subsection 8(5fc): "If there is" to be "more than one certified member representing workers, the workers or the trade unions who selected the members...shall designate one or more certified members who then become solely entitled to exercise the rights and required to perform the duties under this act of a certified member representing workers." So you could have more than one person with certification training having met the requirements, and if there is supposed to be one person exercising that authority in the workplace, or more, then it is up to the workers who selected the members or the trade union to designate who that shall be.

Mr Wildman: Hypothetically, let's say that in a workplace there were three workers who had gained certification. It would then be up to the union, if they are represented by a union, to decide which of those three would be the person to exercise the rights of a certified member under the act. So if there was an agreement that there would be two certified members from workers and two certified members from management, they would have to choose two out of the three to be their reps and to exercise their rights. Is that correct? Am I understanding that correctly?

Mr Millard: As I am following your question I am nodding in the affirmative. Yes.

Mrs Marland: I do not see in this section how we address a workplace that is working 24 hours a day, and I am thinking particularly of a construction site. Is it spelled out somewhere else that those certified workers for that workplace have to be one per shift, or just that one has to be on all the time, or how is that managed?

Mr Millard: The act requires that for a workplace that is required to have a joint health and safety committee, ultimately that employer will be required to have at least one certified member representing management and one certi-

fied member representing the workers. So it does not specify that they must be available during any particular shift. It simply has that requirement.

Mrs Marland: So the requirement is that they exist.

Mr Millard: Yes.

Mrs Marland: But the requirement is not that they are available for every shift if it is a 24-hour operation.

Mr Millard: That is correct.

Mrs Marland: So what is your assumption, Deputy Minister—that if they were bound that they needed a certified worker at two in the morning and they were out of compliance if the certified worker was not available?

Mr Millard: My first assumption is that my boss will be very angry when he hears that I am the deputy minister, I being the assistant deputy minister, but—

Mrs Marland: Oh. Well, I just promoted you.

Mr Millard: There you go.

Mrs Marland: I will go along with that. I will vote for that.

Mr Millard: I was positive there would be some advantage to sitting in the committee, and I found it.

Mr Wildman: That is beyond the mandate of this committee.

Mr Millard: The certification training and thus becoming a certified member is there for a number of functions: to act as eyes and ears for the workforce and for the employer in a number of ways and a number of responsibilities. It is not simply a matter of training simply to be able to stop dangerous work, as some have wanted to interpret this. It really means that we want competent, well-trained, knowledgeable joint health and safety committee members. So we are hopeful that that person, once becoming certified, will exercise his functions of the joint health and safety committee in a knowledgeable way.

There are worker health and safety representatives who can exercise the investigatory responsibilities of the joint health and safety committee without a certified member being there, but we do say that where possible it should be the certified member. I think that the authorities of a certified member will not be constrained at all unduly by our minimum requirement. I am sure that some employers and their workforces will agree very rapidly to have more than one certified member in the workplace.

Stelco, for instance, which I am sure would not mind having me discuss it in this forum, has a

number of joint health and safety committees in its workplace and it has health and safety committees for various different processes within that workplace. Their intent is, as they already do, to have those people trained specifically to understand their joint health and safety committee responsibilities with respect to that part of the workplace. I would expect that they would in turn, once this legislation is passed, certify those people. I think our minimum requirement is exactly that, a minimum requirement, and will be built upon where required.

Mr Wildman: Mr Chair, can I suggest that we deal with each subsection separately and vote on it separately?

The Chair: Yes, we could do that. The first part of the amendment is subsection 8(5f), the certification requirement. All those in favour of that part of the amendment? Agreed. Next is subsection 8(5fa).

Mr Wildman: I have an amendment, Mr Chair.

The Chair: An amendment to that? You wish to move that one part?

Mr Wildman: Yes.

The Chair: Can we treat this amendment then as only part of that one section?

Mr Dietsch: I do not see any reason why not.

The Chair: Is that what you want?

Mr Wildman: Yes.

Mr Dietsch: I would like to hear the amendment first.

The Chair: Okay.

Mr Wildman moves that the word "50" in the second line of subsection 8(5fa) be struck out and the word "20" be substituted therefor.

Mr Dietsch: On a point of order, Mr Chairman: I know this will come up as we go through the bill. I am just wondering, from a procedural point of view, if this were to pass and later on in the bill where it actually points out the makeup of the construction area, if that was to be changed automatically, it would go back through and change the number. I am just wondering whether or not from a time-expediency viewpoint if we could debate that when we get to that part of the bill as opposed to having it interfere with this.

1540

The Chair: Before you go on, is this the first time the 50 workers has been brought up in the bill?

Mr Wildman: If Mr Dietsch is suggesting that it be stood down in every case until we get to the point that we are going to deal with it—

The Chair: No. I think what Mr Dietsch is asking is, if the 50 is sustained in this vote, then does that mean it is sustained through the rest of the bill. I think that is what Mr Dietsch is asking.

Mr Dietsch: That is what I am asking.

The Chair: If he is asking that, the answer is yes.

Mr Wildman: Oh, I see.

The Chair: You do not just keep moving the same amendments.

Mr Wildman: You mean procedurally, yes.

The Chair: Procedurally, yes. Okay.

Mr Wildman: Does that prohibit us, then, from moving amendments subsequently, Mr Chair?

The Chair: It would mean that you could not keep moving the same amendment from 50 to 20 all the way through the bill.

Mr Wildman: Could we move it to 30?

The Chair: You could, yes. Actually that would sustain the 50. So I think you probably could.

Mr Dietsch: Do you want to clarify that for me one more time, please?

The Chair: I will try.

Mr Mackenzie: For my own clarification, Mr Chairman, because it is one thing on the vote here, but we certainly want debate when we deal with the section on construction.

Mr Dietsch: I know that is what my friend is going to want and I am just trying to, from an expediency point of view, look at that particular area.

The Chair: But we are dealing with the construction sector here, are we not?

Mr Dietsch: Yes.

The Chair: We are dealing with the construction sector. So I would ask the clerk to correct me if I am wrong, but it seems to me that if Mr Wildman's amendment to the amendment was to be defeated, that would mean that the 50 was sustained in the construction sector and, therefore, further amendments to reduce it from 50 would be out of order because it had already been sustained by a vote at 50. That is how I would interpret the rules.

Mr Wildman: That would not preclude me from moving the motion and then having you rule me out of order.

Mr Dietsch: Of course not.
Interjections.

Mr Dietsch: Okay. I wanted that clarification, Mr Chairman, so we know exactly. I just do not want to rehash, rehash, rehash.

The Chair: Okay. Do you wish to speak to that?

Mr Wildman: Just very briefly, Mr Chair. This is an example of a very strange situation that the government has put the members of the opposition and themselves in, in that we are now in a situation of having the opposition having to defend the bill against the government. We are here attempting to preserve the original wording to ensure that construction workers are protected and will have committees.

The original wording was 20. I have not gone lower than the government intended in its original bill. I have just reconfirmed what the government intended in the original bill. I personally would have preferred 10, but I did not want to be extreme in this matter. I just wanted to have the government come back to its original position.

So if the government believed originally that 20 was appropriate, then surely they can explain, if they do not support the amendment, why they would not want to maintain the position they had before. We have heard evidence put before the committee that if we do not have it at 20 but rather had a higher number, a significant number of workplaces in the construction sector would not be included in this provision of the legislation. That would be very unfortunate, particularly when the minister has emphasized that one of the purposes of this legislation is to ensure that many workplaces that in the past have not had committees would now have them, and that was one of the purposes of the legislation in the first place.

I do not think we need to go on at length. I am just essentially attempting to defend the principle of the bill against this unwarranted attack by the government.

Mr Mackenzie: Only one other comment, Mr Chairman, and that is that it would have been useful to also have known just exactly how many workers and workplaces do we eliminate with the change from 20 to 50. I am not sure which side, the time frame or the size of the workplace, would cause the most workers to lose out on it, but certainly it does mean that there is a substantial number who will not have the coverage.

The Chair: Any further debate on Mr Wildman's amendment on subsection 8(5fa)?

Mr Mackenzie: I want a recorded vote, Mr Chairman.

The Chair: Recorded vote. Are we ready for the question?

Hon Mr Phillips: I am sorry. I do not mean to prolong it, but sometimes I do not get a chance to be sort of on the record on it and I guess we just need to remind ourselves we are continuing to have joint health and safety committees where there are 20 or more. That will mean we will move from, right now, I think, maybe five or six joint health and safety committees to about 5,000.

Our problem is what size of project do we require a certified worker on? We are not changing the size of the joint health and safety committee projects. It will still be 20 or more. As I say, we will move to, we believe, about 5,000 joint health and safety committees. Our problem is, because of the nature of the construction industry where the trades move through projects relatively quickly, we want to make certain that we have qualified certified workers who are available on the major sites. As we examined it and discussed it, it became clear, to us at least, it was going to be difficult to ensure on projects below 50 that we could have a certified worker. I think it is just important we remember joint health and safety committees on 20 or more. It is the certified worker we are talking of here, and that we believe to be a problem in executing.

Mr Mackenzie: —joint committee without the certified worker; it is a serious question, whether the minister wants to accept it or not. The certified worker is in essence a commitment to a better-educated, better-trained workforce and more safety and health conscious. I do not think there is the concern the minister feels about providing the pool of trained workers.

Mr Wiseman: I think the minister has mostly answered what I was going to say, and that was, when we went around the province, from all the construction industry they tried to bring to our attention that they were a little different out there and that they had people in and out of the trades so much. The minister certainly has not done everything they asked for. He has cut the time to three months from six months that they wanted and so on, but I think it makes some sense and they certainly made their point when we were out there that 50 seemed more realistic. We had one, I believe it was Thunder Bay, where they wanted it down to five and I thought my pool certainly would have been caught up in that at that time. I think the 50 is more realistic for the building trades.

Mr Wildman: The minister's point is taken that we are dealing here with the certified

worker. I recognize that, but the point is, as my colleague said, in order for the committees to be effective in our view, you have to have a certified worker. We are not going to five, we are not going to 10, as I would prefer. We are just going back to the original bill.

The committee divided on Mr Wildman's amendment to the amendment, which was negatived on the following vote:

Ayes

Mackenzie, Wildman.

Nays

Bossy, Callahan, Campbell, Carrothers, Dietsch, Riddell, Wiseman.

Ayes 2; nays 7.

The Chair: We will now deal with Mr Dietsch's amendment on subsection 8(5fa).

Motion agreed to.

The Chair: Subsection 8(5fb), all those in favour? Carried. Subsection 8(5fc)? Carried. Subsection 8(5fd)? Carried. Subsection 8(5g)? Carried.

Shall subsections 8(5f) and (5g), as amended, stand as part of the bill? Carried. That means we have done down to subsection 8(5), at which point we will pick up and continue on Monday morning at 10 am. The committee is adjourned.

The committee adjourned at 1550.

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Chair: Laughren, Floyd (Nickel Belt NDP)

Vice-Chair: Mackenzie, Bob (Hamilton East NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Fleet, David (High Park-Swansea L)

Harris, Michael D. (Nipissing PC)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miller, Gordon I. (Norfolk L)

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Wildman, Bud (Algoma NDP)

Substitutions:

Bossy, Maurice L. (Chatham-Kent L) for Mr Miller

Callahan, Robert V. (Brampton South L) for Mr Lipsett

Campbell, Sterling (Sudbury L) for Mr Fleet

Carrothers, Douglas A. (Oakville South L) for Mr McGuigan

Wiseman, Douglas J. (Lanark-Renfrew PC) for Mr Harris

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

Witnesses:

From the Ministry of Labour:

Phillips, Hon Gerry, Minister of Labour (Scarborough-Agincourt L)

Millard, T. J., Assistant Deputy Minister, Occupational Health and Safety Division

Beall, Kathleen, Counsel, Legal Services Branch



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Government
Publications

No. R-21 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Resources Development

Occupational Health and Safety Statute Law Amendment Act, 1989



Second Session, 34th Parliament

Monday 26 February 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

Published by the Legislative Assembly of Ontario
Editor of Debates: Peter Brannan

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday 26 February 1990

The committee met at 1022 in committee room 2.

OCCUPATIONAL HEALTH AND SAFETY STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Chair: The standing committee on resources development will come to order as we continue the clause-by-clause examination of Bill 208, An Act to amend the Occupational Health and Safety Act.

When we adjourned on Thursday, we had stood down one section of the bill; namely, subsection 3(2). It is my understanding that we are not quite ready to proceed with that. Is that correct, Mr Millard?

Mr Millard: That is right, Mr Chairman. I think that just a bit of further discussion among members opposite and the government should lead to an amended motion for this afternoon that is mutually acceptable.

The Chair: All right. In which case, we will move to subsection 4(5) on page 5 of the bill. I have in front of me a government motion.

Section 4:

The Chair: Mr Dietsch moves that subsection 4(5) of the bill be struck out and the following substituted:

"(5) Subsection 8(6) of the said act is amended by striking out 'and' at the end of clause (c) and by adding thereto the following clauses:

"(e) obtain information from the constructor or employer concerning the conducting or taking of tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace for the purpose of occupational health and safety; and

"(f) to be consulted about, and have a designated member representing workers be present at the beginning of, testing referred to in clause (e) conducted in or about the workplace if the designated member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid."

Mr Dietsch: I think the amendment is fairly self-explanatory. The intent, of course, is to have one member of the committee present at these testings to ensure the validity of the tests.

Mr Wildman: I have a couple of questions. If you look at the original drafting of the bill, clause 8(5)(e) on page 5 of the draft we have before us, the last part of that clause says, after the word "safety," "and to be consulted concerning and be present at the beginning of testing conducted in or about the workplace."

What Mr Dietsch's amendment does is add another clause, (f), which basically says that the designated member will be consulted and the designated member will be present "if the designated member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid."

Now my question is this: How will the designated member know whether or not his or her presence is required until he or she has seen what chemicals are to be tested and what methods are to be used? In other words, I do not know how the designated member, in many cases, will know whether or not he or she should be present until he or she is already present.

Mr Dietsch: I think, in essence, there are some tests that take place in the workplace that do not necessarily require someone present at all times. For example, I am thinking of the kinds of routine tests that perhaps take place with samplings for noise, samplings for air, those kinds of things. After having gone through that process on a number of occasions, they become fairly routine. However, the individual member will have an opportunity. They are empowered to be present, if they wish, and they can insist on being present, but it is a case of giving that member, I guess, some discretion on his own part as to whether he feels it would be necessary.

The Chair: Any further discussion on Mr Dietsch's motion? If not, ready for the question?

Mr Mackenzie: I would like a recorded vote.

The committee divided on Mr Dietsch's motion, which was agreed to on the following vote:

Ayes

Bossy, Callahan, Dietsch, Lipsett, Pelissero, Riddell.

Nays

Mackenzie, Wildman.

Ayes 6; nays 2.

Mr Wildman: Mr Chair, just as a point, the Conservative members would not have known if they should have been present because they were not present this morning.

The Chair: Mr Dietsch moves that subsection 8(6a) of the act, as set out in subsection 4(6) of the bill, be struck out and the following substituted:

“(6a) The members of the committee who represent workers shall designate one of them who is entitled to be present at the beginning of testing described in clause (6)(f).

“(6aa) A constructor or employer who receives written recommendations from a committee shall respond in writing within 21 days.”

Mr Mackenzie: I would like to move an amendment.

The Chair: Mr Mackenzie moves that subsection 8(6aa) of the act, as set out in the government motion, be amended by striking out “21” in the third line and substituting “seven.”

Mr Mackenzie, we will deal with yours first.

Mr Mackenzie: I think we had some discussion on this earlier but I still, for the life of me, do not know why we need need 21 days or 30 days; 21 as it is now. I think seven days is adequate. In the worst-case scenario it can be a notice that a little more time is required, but set out why and the parameters of that request for time.

Mr Dietsch: With respect, there was a considerable amount of debate when the same kind of resolution came forward in section 3 of the bill. It was pointed out that there could be times when there would be a requirement for the use of the 21 days if particular kinds of testing had to be done in the workplace. We wanted to make sure that the kinds of tests that were done were meaningful and that the company, within the written response, has an obligation to point out the kinds of things that would be done to repair the situation. It was felt that the 21 days was reasonable, outlining the fact that it was of a greater concern that we wanted to have the committee respond to the joint health and safety committee within that period of time so that it did not unduly delay. It is trying to find some middle ground in that respect. This was extensively debated at that previous time.

Mr Wildman: If the government really wants to have flexibility, why does it not just say, “Before the next full moon”?

Mr Mackenzie: In a brief response to my colleague Mr Dietsch, it is a question of time and timeliness and how fast we can get answers back. I think that is vitally important and I remind you that you still have to take action based on whatever reports you get back. I think the workers are a little more concerned in terms of the time it is going to take. We have not had a particularly good record heretofore.

The committee divided on Mr Mackenzie’s motion, which was negated on the following vote:

Ayes

Mackenzie, Wildman.

Nays

Bossy, Callahan, Dietsch, Lipsett, Pelissero, Riddell.

Ayes 2; nays 6.

The Chair: We will now move to the government motion.

Mr Wildman: I have a question on the new subsection 6a in the amendment.

The Chair: As moved by Mr Dietsch, you mean?

Mr Wildman: Yes. Could we have an explanation as to why the government feels this is necessary, considering the amendment passed to subsection 4(5)?

Hon Mr Phillips: Which part? I am sorry.

Mr Wildman: We just passed an amendment previously, clause 4(5)(e), which deals with the presence of a designated worker or a representative of the workers at testing. I am not arguing with you; I am just wondering why—

Mr Dietsch: The intent of subsection 6a was basically that it would permit one worker to be present and not necessarily the entire committee. It was to ensure that there was no unnecessary, I guess, overattendance at these kinds of tests, but to make sure that the test was adequately represented by both parties. The top really spells it out. It permits one worker.

The Chair: All those in favour of Mr Dietsch’s amendment to subsection 4(6) please indicate.

All those opposed?

Motion agreed to.

The Chair: Shall subsection 4(6), as amended, stand as part of the bill? Carried.

We move to subsection 4(7) and we have an NDP motion.

Mr Mackenzie moves that subsections 8(8c) and (8d) of the act, as set out in subsection 4(7) of the bill, be struck out and the following substituted:

“(8c) Unless otherwise required by the regulations or an order by an inspector, a member designated under subsection (8) shall inspect the workplace each month.

“(8d) Unless otherwise required by the regulations or an order by an inspector, a member designated under subsection (8) shall inspect the construction project as frequently as determined by the committee.”

Mr Dietsch: I wonder if Mr Mackenzie could reiterate his reasons why in this particular resolution.

Mr Mackenzie: It is really a question of inspecting the whole workplace. It is our contention that the more the committee members are inspecting the workplace, the quicker we are going to respond to situations we have. There are some classic examples in Ontario. I keep referring to Libbey-Owens Ford, but it is one classic example where we might not have had the number of people that we have sensitized today had there been proper, full inspections in that workplace.

Mr Dietsch: This appears to be the same kind of resolution that we discussed before. We would be willing to stand it down until we have had an opportunity to go over the other resolutions at luncheon.

Mr Mackenzie: I was going to ask that; I thought it was the same damned thing.

The Chair: All right, we will stand it down then.

Mr Dietsch: What takes place, from a procedural viewpoint, with respect to the Conservative motion?

The Chair: The Conservative motion, unless someone moves it, goes by the board.

Mr Dietsch: Mr Mackenzie does not want to move that one?

The Chair: I assume that since they are standing it down anyway, it would be appropriate to consider any other amendments. Let's move on. We are leaving 4(7) until this afternoon. It is agreed, 4(7) is stood down. We are now on to subsection 4(8), and there is a government motion.

Mr Dietsch moves that subsection 4(8) of the bill be amended by adding the following subsections to section 8 of the act:

“(12b) A member of a committee shall be deemed to be at work while the member is

fulfilling the requirements for becoming certified by the agency and the member's employer shall pay the member for the time spent at the member's regular or premium rate as may be proper.

“(12c) Subsection (12b) does not apply with respect to workers who are paid by the agency for the time spent fulfilling the requirements for becoming certified.”

The Chair: Before me move on, is there an amendment to Mr Dietsch's motion?

Mr Mackenzie: In this package of so-called integrated motions, the next section is section 20. It makes it a little bit difficult to follow, we find.

Mr Wildman: I am using the ones we got last week.

The Chair: We will try to get you one.

Mr Dietsch: You had an amendment in subsection 4(8), Mr Mackenzie.

The Chair: Yes, but the question is whether or not Mr Mackenzie wishes to amend your motion. What is in the package is amending the bill.

Mr Wildman: I think ours would be 12d. If these were to carry, then we would move ours.

The Chair: Let's go ahead and debate Mr Dietsch's motion. Then if you wish to move an addition to the section, you can do so.

Mr Wildman: Yes, that is right. Ours is not dealing with the same issue as his amendment.

1040

The Chair: Mr Dietsch, do you wish to add anything further to your amendment to 4(8)?

Mr Dietsch: I think it is fairly straightforward. In 12b we are ensuring that workers who are fulfilling their requirements are going to be paid, and I think that in relationship to 12c there will be some cases in which the agency will be responsible for payment of some training. In that particular case, the agency will pick up that cost. I think it is reasonably straightforward.

Mr Wildman: In the interests of goodwill and harmony, we will support this amendment. I just have one question with regard to the exception, 12c in the amendment. Obviously you do not want the person to be getting double pay, so if he is being paid by the agency, then that is fine. That is the point of that.

Mr Dietsch: That is right, and it allows the agency to make payments with respect to training and in that way to work.

Mr Wildman: However, what if the agency is not making payments?

Mr Dietsch: Then the employer would be.

Motion agreed to.

The Chair: We will treat Mr Mackenzie's motion as adding a subsection, which then would become 12d.

Mr Mackenzie moves that subsection 4(8) of the bill be amended by adding the following subsection to section 8 of the act:

"(12d) A member of the committee is entitled to bring in a technical adviser to inspect and monitor the workplace to identify situations that may be a source of danger or a hazard to workers and to attend committee meetings when mutually agreed."

The Chair: Do you wish to speak to that?

Mr Mackenzie: I think it is so obvious that, with the complexities of the workplace today, you sometimes need your own expertise.

Mr Dietsch: As I understand the debate we had previously, it centred around the argument in terms of mutual agreement and trying to find some relationship there. It was not necessary as an amendment because, if companies mutually agree, then obviously they can work those kinds of things out among themselves. It is just an amendment that we do not feel is necessary.

Mr Mackenzie: I think it should be pointed out again that the amendment simply enables the union or the workers to bring in staff health and safety reps or other technical advisers to inspect and monitor the workplace and advise them as to what extent the hazard actually does exist. It seems to me that, having full-time staff people, if they could help people to attend meetings upon approval of both sides, I cannot understand why there would be any difficulty in that.

Mr Riddell: It seems to me we have debated this before, and the question of liability was or was not commented on. I do not know whether there ever was an answer to the whole matter of liability if you are going to bring in this technical adviser.

Hon Mr Phillips: Tim, I think there was a question on liability where you have an outside party brought in to a situation like this. I do not know whether you had a comment on that or not.

Mr Millard: As I recall, legal counsel Kathleen Beall spoke to that and I think indicated that it would be very much dependent on the set of circumstances that existed from time to time and in any given situation to determine whether in fact there would be civil liability. I think she also indicated that our act would not place liability in those situations but that there would be civil liability and you have to judge it on its

individual merits. Perhaps she would like to expand.

Ms Beall: What Mr Millard said is what I remember having said, except that I did not actually reference our act in determining whether or not our act will place any liability. Our act merely says there are certain instances where a person is protected from liability. Whether or not those people would be protected would be dependent, as with the question of civil liability, on the particular circumstances. It is very difficult to make any kind of call with respect to any liability in a general context. It would have to be looked at in each particular circumstance.

The committee divided on Mr Mackenzie's motion, which was negated on the following vote:

Ayes

Mackenzie, Wildman.

Nays

Bossy, Callahan, Dietsch, Lipsett, Pelissero, Riddell.

Ayes, 2; nays 6.

The Chair: Shall subsection 4(8), as amended, stand as part of the bill? Carried. Shall subsection 4(9) stand as part of the bill? Carried.

Section 4, as amended, agreed to.

Section 5:

The Chair: We now move to section 5 and we have a government motion.

Mr Dietsch moves that subsection 8a(1) of the act, as set out in section 5 of the bill, be struck out and the following substituted therefor:

"(1) If a committee is required at a project, other than a project where fewer than 50 workers are regularly employed or that is expected to last less than three months, the committee shall establish a worker trades committee for the project."

Mr Wildman: I was going to move an amendment to the amendment to strike out that phrase, but I suppose it is more in order just to vote against it.

The Chair: This is true.

Mr Wildman: The problem we see is that on a construction site, even if there are fewer than 30 workers employed, there may be a large number of trades involved. It might be in small numbers, but there might be a large number of different trades.

If there is not a trades committee established, as was indicated by a number of the construction

trades representatives who appeared before the committee, you might have a situation where a carpenter believes that he or she is in a potentially hazardous situation and the only person from the committee who is available might be an electrician or a bricklayer or whatever. They may not be able to properly judge a situation faced by a carpenter because the person may not be completely familiar with the carpentry trade.

I believe the construction trades council representatives who appeared before the committee indicated that they thought construction worker trades committees should be established on projects, not on the basis of the number of workers but on the basis of the number of trades involved.

The Chair: All those in favour of Mr Dietsch's motion? Opposed?

Motion agreed to.

The Chair: That deals only with subsection 8a(1). Is there any further debate on the rest of section 8a? Shall section 8a, as amended, stand as part of the bill? Carried. We then move to 8b.

Mr Dietsch: I am not sure how you want to carry this out. It is a bit awkward not having any Conservatives in here.

The Chair: The Conservative motion is actually out of order because it simply says to strike it out, in which case the proper procedure is to vote against it. So they are not affected by that. Go ahead, Mr Dietsch.

Mr Dietsch: I am willing to abide by your rule, being as you are known as a neutral Chair.

The Chair: It is starting to hurt.

Mr Dietsch: I am not sure it is a title you will ever have undone, at least as far as I am concerned.

1050

The Chair: Mr Dietsch moves that section 8b of the act, as set out in section 5 of the bill, be struck out and the following substituted:

"8b(1) The constructor or employer at a workplace shall consult a health and safety representative or the committee with respect to proposed testing strategies for investigating industrial hygiene at the workplace.

"(2) The constructor or employer shall provide information to a health and safety representative or the committee concerning testing strategies to be used to investigate industrial hygiene at the workplace.

"(3) A health and safety representative or a designated committee member representing workers at a workplace is entitled to be present at

the beginning of testing conducted with respect to industrial hygiene at the workplace if the representative or member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid.

"(4) The committee members representing workers shall designate one of them for the purpose of subsection (3)."

Mr Wildman: We have had this debate already on the question of how a person knows whether or not his or her presence is necessary, but it seems to me that throughout this amendment there is an intention by the government to limit the number of worker representatives in attendance in workplace testing. Is that correct?

Mr Dietsch: I would not necessarily say limit. On the one hand it ensures that someone will be present and on the other hand it says that there will be one person present. If you call that limiting—

Mr Wildman: The reason I said that is because I am comparing it with the original draft in the bill that you are amending. The original bill says, for instance, in subsection 2, "The constructor or employer at a workplace shall provide information to a health and safety representative or the committee members who represent workers," and in the amendment it says, "or the committee." I am just trying to guess as to what the significance is of your changing that to "the committee" rather than "the committee members." Is there any significance?

Mr Dietsch: You are probably right in the first instance. The bill wants to ensure that someone is present, and it does that, but it wants to also ensure that it is reasonable in the presence of people at the particular testing site, so it limits the whole of the committee from going to the testing site. Is there a problem with that?

Mr Wildman: I do not know.

Mr Mackenzie: Let me ask a question. It says: "The constructor or employer at a workplace shall consult a health and safety representative or the committee with respect to proposed testing strategies for investigating industrial hygiene at the workplace."

Suppose the constructor or employer consults only the management representative?

Mr Dietsch: In essence, with respect to items 1 and 2, that information can be shared with the whole of the committee in respect to the presence at the actual testing site. We are talking about one person representing that committee there.

Mr Mackenzie: Yes, it can be shared, but what guarantee do we have if it happens to be the management representative?

Mr Dietsch: It will not, because the worker representative will be present, and obviously the worker representative would share that information.

Mr Mackenzie: Am I reading something wrong?

Mr Millard: The health and safety representative is a defined entity in the act, and the health and safety representative is that worker who is appointed to represent the interest of workers at a project or workplace smaller than that required to have a committee. A committee is a defined entity in the act, and the committee is the joint health and safety committee comprised of both worker and manager representatives. So when we speak about a health and safety representative, we are talking about a worker. When we talk about the committee, we are talking about the joint health and safety committee.

Mr Wildman: Mr Millard's comment raises another question. I am looking back at the definitions. We have a definition for a certified member, right? We do not have a definition for health and safety representative, do we?

Mr Millard: Yes, in the act we do, Mr Wildman.

Mr Wildman: Oh, in the act. All right.

Mr Millard: Perhaps I can have legal counsel lead the way through the act, first in terms of where "health and safety representative" is defined and then how the selection of a health and safety representative takes place.

Ms Beall: In the act as it exists now, paragraph 11 of section 1 says, "'health and safety representative' means a health and safety representative selected under this act." Then if you turn to section 7 of the act as it now exists, subsection 7(1) says:

"Where the number of workers at a project regularly exceeds 20, the constructor shall cause the workers to select at least one health and safety representative from among the workers on the project who do not exercise managerial functions."

I also note that Bill 208 proposes amendments to that section.

The Chair: Satisfied?

Mr Wildman: Thank you.

The Chair: Okay. Any further debate on Mr Dietsch's motion on section 8b? This will replace the entire section 8b.

Motion agreed to.

Section 5, as amended, agreed to.

Section 6:

The Chair: We have a decision to make. We can proceed with it the way it is before us, but there are PC motions contained in the package. According to the rules, we can just proceed or the committee can stand down this section until a PC representative arrives.

Mr Dietsch: Mr Chairman, perhaps you can tell me, has there been some indication from the Progressive Conservatives when they are going to be present?

The Chair: Fair question. Yes, the clerk has a note saying that the member is en route but she will not be here not here until about 11 and asking that we proceed without her.

Mr Dietsch: She asked that we proceed without her?

The Chair: That is what the telephone message indicates.

Mr Dietsch: I would like to move on, because section 6 is rather a lengthy section. I would hope that maybe we can enter into the process, and then hopefully Mrs Marland will be here by the time we hit her particular amendment area. As I understand it, she is talking about subsection 10(1). We might rather deal with the whole section and stand down subsection 10(1), as opposed to standing down the whole section, if that is agreeable to my colleagues.

Mr Callahan: I waive.

Mr Wildman: That sounds reasonable to me. I do not like to move ahead without Mrs Marland being present, but it is five to 11 and she said she was going to be here around 11, so if we can begin the discussion, then probably, if she does arrive, we will not have completed it.

The Chair: I do not like proceeding either.

Mr Dietsch: In order to accommodate, I think the best way to do it is just to stand down the area that her amendment deals with, as opposed to the whole section, and see how it works.

The Chair: All right. Let's try that. If she is not here by the time we are ready to move on to the next section, we could proceed.

1100

Section 6:

The Chair: The first section deals with subsection 10(1). The clerk points out that the government amendment is to the government motion that presumably will now be moved, rather than to the existing act, so let's go ahead

with the government motion. Good point. Bailed out again.

Mr Dietsch: That is why we picked her.

The Chair: Mr Dietsch moves that section 6 of the bill be struck out and the following substituted:

"6. Section 10 of the said act is repealed and the following substituted therefor:

"10(1) An agency to be known as the Workplace Health and Safety Agency is established.

"(2) The agency is composed of a board of directors, appointed by the Lieutenant Governor in Council, consisting of,

"(a) one chair, selected in accordance with subsection (3);

"(b) two full-time vice-chairs, one of whom represents management and one of whom represents labour;

"(c) 12 part-time members, six of whom represent management, six of whom represent labour;

"(d) four additional part-time members who are health and safety professionals, two selected in consultation with representatives of management and two selected in consultation with representatives of labour; and

"(e) the executive director of the agency, selected in consultation with the other members of the board.

"(3) The chair shall be a candidate recommended by the minister and selected from a list of candidates provided jointly by the vice-chairs.

"(4) The vice-chairs shall provide the minister with a list of candidates for chair.

"(5) If the position of chair is vacant, the vice-chairs shall jointly act as chair until the vacancy is filled.

"(6) The chair and the executive director are nonvoting members of the board.

"(7) The board may make rules governing its procedure.

"(8) The members of the board shall be paid such remuneration and expenses as the Lieutenant Governor in Council determines.

"10a(1) The executive director of the agency shall manage the operations of the agency in accordance with the directions of the board of directors.

"(2) The executive director may appoint such employees and retain such other persons to provide professional, technical or other assistance to the agency as are required for the purposes of the agency.

"(3) The Public Service Act does not apply with respect to employees of the agency.

"(4) The agency shall be deemed to have been designated by the Lieutenant Governor in Council under the Public Service Pension Act, 1989 as one whose employees are required to be members of the public service pension plan.

"10b(1) The agency shall file with the minister not later than the first day of June in each year an annual report upon the affairs of the agency.

"(2) The accounts of the agency shall be audited annually."

Mr Mackenzie: It is fairly straightforward. It is also at the heart of part of the betrayal, as far as I am concerned. What we are trying to establish in this bill, more than anything else, is the internal responsibility and the equality issue in terms of responsibility and authority. I do not know yet where in the area of health and safety we need or have compelling enough arguments before us to throw in the so-called neutral chair.

I think you are going to have difficulty arriving at it to begin with, but even if you are, there will always, always be a tendency on a difficult issue to sidestep resolving it where you can refer to the chair, even if that chair is a nonvoting chair. That may improve the situation, but that is an out for somebody who does not want to make a decision; it is certainly an out for being used to delay as well. I just think the so-called neutral chairman does a fundamental disservice to the legislation we have before us and the whole principle of internal responsibility. I think it is a mistake that we should not be making.

Hon Mr Phillips: At the risk of prolonging it, I think it is important to get on the record what led us to this recommendation. It is one that I know the committee wrestled with a lot, and I certainly heard it from the groups that presented it to the committee, and also I think committee members debated it on a fairly regular basis. What we are trying to do, obviously, is to come up with a format that works.

My original suggestion was to have a voting, neutral chair. We weighed carefully the comments to the committee and we accept the point of view that there is a risk, if you have a voting chair, that both sides will take firm positions and look to that individual, rather than to be the facilitator, to be the arbitrator. At the same time we were looking for some vehicle that helped the agency to facilitate its activities and to facilitate its functioning.

I guess one format that seems to work well is our Mining Legislative Review Committee—I have been impressed with the work it has done—where we now have a neutral, nonvoting chair and I am told it works effectively from both

sides. You can see the wording here is that, "the chair shall be a candidate recommended...and selected from a list of candidates provided jointly by the vice-chairs."

It is our hope that those two things—first, having the chair as nonvoting so that the chair cannot be in the role of deciding issues but rather facilitating issues, and second, that "the chair shall be a candidate...selected from a list of candidates provided jointly by the vice-chairs"—both of those things will, to the best of our ability, ensure that we have a chair who has the support of both parties and who does not get in the road of the two parties reaching consensus.

I realize it is a difficult issue for all of the committee members who have wrestled with it, but in the end I guess we have concluded that this is the one that accomplishes all of the objectives the best.

Mr Wildman: Again, I am referring back to the original bill. I understand what the minister has just said, but it does not really explain why there was a need to change what was proposed in the original bill. The original bill says, in paragraph 10(1)(1), there will be, "Two full-time directors, one of whom shall represent management and one of whom shall represent labour, who shall jointly act as co-chairpersons."

I have yet to find out or have an explanation as to what is wrong with that. I understand the argument about whether or not a chair which is neutral should be voting or nonvoting, and the argument that if it is a nonvoting person then that person will not as likely be left to make the decision, which was one of the arguments that was raised against having a chair other than the two full-time directors, one from management and one from labour.

But I have not yet heard why this was a bad idea. We have, in the internal responsibility system, co-chaired health and safety committees. One of the major parts of the bill, one of the major achievements that the minister has pointed to, is the expansion of the number of committees, the number of workplaces that will have to have committees, and those committees do not have neutral chairpersons. They are co-chaired.

Now, if it is acceptable and works well to the point that the government, the ministry, wants to expand that system to a number of new workplaces that were not required to have joint committees before, then why can it not and why should it not work as is originally proposed in the first draft of the bill? Essentially what I am asking is why it was considered necessary by the

minister and the government to amend this section 10 of the act.

I would like an explanation. Why is it that, suddenly, we have to change this? You think of the old phrase, "If it ain't broke, don't fix it." Why is it broken, if it is?

1110

Mr Riddell: I am inclined to think that a bipartite arrangement would work well with the agency, but I am also a strong believer in getting a third opinion and I think this is where a neutral chair could play a major role. I am not prepared to underestimate the integrity and the ability of the workforce, as some of my colleagues apparently are. I do not believe for a minute that the kind of person the workers elect to represent them as a vice-chair is a person who is going to slough off his or her responsibilities.

I believe that these workers and worker representatives are capable of making decisions and would, without question, make a decision. Let's say that the worker representatives chose Mr Mackenzie to represent them on this agency. I do not doubt for one minute that Mr Mackenzie would be prepared to make a decision, and he certainly would not slough off his responsibilities because there happened to be a neutral chair.

Had it been that the chair was allowed to vote, I think maybe I would have had to go along with the New Democratic Party in supporting a bipartite arrangement, but being that this neutral chair does not have a vote but could well give a third opinion, which in many cases is needed—I think if I was to go for a major operation today, I would not accept the word of my doctor; I would not be guided by my own conscience, but I would be out seeking a third opinion. I think that if there are going to be some tough decisions to make, a third person in the form of a nonvoting chair may be just the kind of person who would be needed in that case.

Therefore I am prepared to support this motion with a nonvoting chair, but as I said before, if this chair was allowed to vote, I would have to go back to a bipartite arrangement.

The Chair: The minister is breathing easier.

Mr Mackenzie: I am glad to hear my colleague's position, but I remind him that what he would be doing really was supporting the previous minister, who also did not think we needed the neutral chair in the original piece of legislation we had. Also, I am not concerned about the workers' rep, the co-chairman. I am more concerned about management if it decides to dig its heels in. If the minister admits that there might be some risk in a voting rep or a voting

so-called neutral chairman, while I think the nonvoting chairman may lessen it a little—at least I would prefer it to a voting chairman—I would also tell him I do not see that there is necessarily that much less risk with a neutered or gelded chairman either, for Pete's sake, in the bill.

It is quite easy if there is not the responsibility there to reach a disagreement in terms of a vice-chair and then still refer it to a nonvoting chairman.

Mr Riddell: They become excellent consultants.

Mr Dietsch: Mr Chairman, I have a bit of concern over the procedural approach and I am just wondering if I would lean to your suggestion. I am quite willing to allow some extra time for my colleague Mrs Marland to be able to make it. I understand at first hand the difficulties in wrestling with the traffic on the Queen Elizabeth Way, but I would like to move on. I am just wondering, as opposed to putting it completely down, can we deal with the balance of it?

Mr Mackenzie: I have one or two other questions. Could we deal with those?

The Chair: Go ahead.

Mr Mackenzie: I would like a clarification of, "The Public Service Act does not apply with respect to employees of the agency," just so I am clear as to what the government is doing here. It sounds to me like it is trying to possibly remove a bit of a burr under its saddle in the Ontario Public Service Employees Union representation.

Mr Millard: Inasmuch as it is intended that this will be a schedule 3 agency, which enjoys an arm's-length relationship with government, the schedule 3 agencies have the option of being crown employees as opposed to being covered by the Public Service Act. That is the intent of it, to say that the Public Service Act does not apply, that this will be a crown agency and a schedule 3 agency.

Mr Mackenzie: We have been working a long time to get crown employees under different legislation. I do not know why we add to it, if I am understanding you correctly.

Mr Millard: The schedule 3 agency employees would enjoy the same status as all other employees of crown agencies. Certainly, they would have the right to associate and the right to form themselves into a trade union if they wished.

Mr Mackenzie: Their choice.

Mr Millard: Yes.

Mr Wildman: I am sorry; I was not attentive about the point of order or where we are going in terms of Mrs Marland's absence.

The Chair: May I suggest to the committee that we either should stand the whole thing down or we should proceed with everything except what Mrs Marland's amendment refers to. Otherwise we are going to have two debates. I guarantee you that is what will happen. One possibility would be to deal with everything except that part Mrs Marland's amendment deals with. Her amendment deals with Mr Dietsch's amendment, so it would be hers amending his. We will not move that it stands as part of the bill because she attempts to amend that, but we will carry the amendment as Mr Dietsch moves it.

I know it is a delicate and fragile balance. Any further debate? We are not trying to rush it through.

Mr Wildman: I just was asking for clarification. In terms of clause 10(2)(d), can I discuss that? Is that acceptable?

The Chair: Yes.

1120

Mr Wildman: These four individuals, professionals, are to be appointed by the Lieutenant Governor in Council, two in consultation with management, two in consultation with labour. What are the qualifications to be considered a health and safety professional? Are those to be determined in regulations or are those simply to be determined in the consultation process?

Mr Millard: The latter set of circumstances are the ones that we intended to prevail; that those would be defined, not through a set of regulations but in the consultative process, and we indicated publicly that we are looking for people who have shown their ability to exercise professional credentials and professional experience—if they do not have the credentials—in the education field and the health and safety area, as would be required by a body such as this. So there is no intent to regulate the requirement for a profession.

Mr Wildman: Hypothetically, a management representative might be somebody management advises the Lieutenant Governor in Council to appoint, who might have been involved in some programs set up by one of the accident prevention associations. That is hypothetical; it could be something like that.

The Chair: This is the section of the bill that Mrs Marland's amendment could change.

Mr Wildman: That is why I asked. I am just asking for an explanation, if that is acceptable. I am not going to eliminate the role.

Mr Millard: It is difficult for me to hypothesize. Certainly, someone who had displayed the kind of credentials, either in advising labour in such matters—

Mr Wildman: No, I was just saying the management. I was going to go to labour in a moment.

Mr Dietsch: A person like yourself.

Mr Wildman: That is the point. I do not think it should be a person like myself, if you are going to talk about a health and safety professional. That is the point I am trying to make here.

Mr Millard: I know. That is why I say we would look for credentials, we would look for experience, we would look for a proven track record in terms of their contribution to education or to health and safety.

Mr Wildman: Or on the other side; of labour, if it were someone who might have been involved in one of the clinics, for instance.

Mr Millard: Yes.

Mr Wildman: That would be a person who had demonstrated some experience in the field and he may or may not have academic credentials in the field.

Now, in terms of their votes, they are voting members of the agency, so they have an equal say, as individuals, to all other individuals on the agency, the six management and six labour representatives.

Mr Millard: That is correct.

The Chair: Not to rush the committee, if we proceed, we would stand down subsection 10(2) of the act, as set out in section 6 of the bill, and deal with the question on Mr Dietsch's amendment that covers everything else in section 6. Is that agreed by the committee? Are you ready for the question?

Mr Riddell: Reluctantly.

The Chair: Reluctantly ready for the question? All those in favour of Mr Dietsch's amendment, except subsection 10(2) as set out in section 6 of the bill? Opposed?

Mr Wildman: Except subsection 10(2)?

The Chair: The one that sets up the board of directors.

Mr Wildman: What about this other amendment?

The Chair: The next section will deal with the actual functions of the agency. This deals with the agency itself.

Mr Wildman: Okay.

Motion agreed to.

The Chair: Except subsection 10(2), we all agree. We now move to section 6a, which adds to the bill.

Mr Dietsch moves that the bill be amended by adding the following section:

"6a. The said act is further amended by adding thereto the following section:

"10c(1) The functions of the agency are, and it has the power,

"(a) to develop requirements for the certification of members of committees and other workers;

"(b) to establish and administer, in accordance with the requirements of the minister, the certification process including the training requirements of members of committees and other workers;

"(c) to certify persons according to requirements established under this act and standards developed by the agency;

"(d) to develop and deliver educational and training programs, purchase programs from other institutions and contribute to the development of safety programs by other institutions;

"(e) to make grants or provide funds, or both, for the purposes described in clause (d);

"(f) to promote public awareness of occupational health and safety;

"(g) to provide funding for occupational health and safety research;

"(h) to develop standards for first aid training and education and provide funding for first aid training;

"(i) to develop requirements for the accreditation of employers who operate successful health and safety programs and policies;

"(j) to accredit and revoke the accreditation of employers according to the standards developed by the agency;

"(k) to advise the Workers' Compensation Board if accredited employers operate in such a manner as to reduce the hazard to workers in the workplace;

"(l) to advise the Workers' Compensation Board if employers fail to take sufficient precaution for the prevention of hazards to workers;

"(m) to advise the minister on matters related to occupational health and safety which may be brought to its attention or be referred to it;

"(n) to oversee the operation of,

"(i) such occupational health and safety medical clinics as may be designated by regulation,

“(ii) such safety and accident prevention associations as may be designated by regulation, and

“(iii) such occupational health and safety training centres as may be designated by regulation;

“(o) to make grants or provide funds, or both, to the organizations referred to in clause (n);

“(p) to provide programs and services for a fee.

“(2) The agency may give directions to the governing body of an organization referred to in clause (1)(n) and the governing body shall comply with the directions.

“(3) The agency shall not make a grant or provide funds to an organization referred to in subclause (1)(n)(ii) if a person designated by the minister advises the agency that the governing body of the organization does not, in his or her opinion, have an equal number of representatives of management and of workers employed in the sector represented by the organization.

“(4) The agency shall not make a grant or provide funds to an organization referred to in subclause (1)(n)(iii) if a person designated by the minister advises the agency that the governing body of the organization does not, in his or her opinion, have an equal number of representatives of management and of workers.

“(5) Subsections (3) and (4) come into force two years after the date on which this section comes into force.

“(6) The agency shall make payments to persons regularly employed in the construction industry, other than persons who may become members of a committee who represent management, in respect of the time spent fulfilling the requirements for becoming certified by the agency.

“(7) The agency shall establish a small business advisory committee, composed of an equal number of representatives of management and of workers in the small business community.

“(8) If the agency fails to fulfil any of its functions and the minister determines that there is a significant public interest at stake, the minister may take whatever steps are necessary to ensure that the functions are fulfilled.

“(9) The board of directors may delegate in writing any of the agency's powers or duties to an employee of the agency who may act in the place of the agency.”

1130

Mr Wildman: We will have an amendment to the amendment to subsections 3, 4 and 5.

The Chair: Is this one that is already in the package?

Mr Wildman: Yes. It is an alternative, though, because the government amendment restructures. This was going to be an amendment, in our package, to section 10d in this section of the government's amendment. So we put it now instead of what we originally intended.

The Chair: You wish to amend Mr Dietsch's proposed amendment?

Mr Wildman: Yes, just to subsections 3, 4 and 5, though. We are not dealing with the ones prior to that.

Mr Mackenzie: Do you want the amendment?

The Chair: It says “representation.”

Mr Wildman: It deals with representation and it also deals with funding. The heading is “representation” but it deals with funding as well.

The Chair: Mr Mackenzie moves that subsections 10c(3), (4) and (5) of the act, as set out in the government motion, be struck out and the following substituted:

“(3) The agency shall determine the representation in respect to the manner in which an association, clinic or training centre is operated, and no grants or funds shall be given to any accident prevention association, occupational health and safety medical clinic or training centre established or continued under this act unless such representation is achieved.

“(4) Within six months after this section comes into force, the agency shall establish a plan for the representation in respect to the manner in which an association, clinic or training centre is operated.

“(5) Subsection (3) comes into force one year after this section comes into force.”

Mr Mackenzie: This basically deals with subsections 3, 4 and 5, at the bottom of page 2 of Mr Dietsch's amendment and the top of the next page. These are amending those three sections.

Mr Wildman: You will note that the motion placed by my colleague is designed to ensure that any agency receiving funds or grants will have proper representation; that is, from both management and labour. It differs from the government amendment in that in subsection 4 we are setting out a time frame during which time the agency will establish a plan for representation on an association, clinic or training centre.

The government amendment does not do that. It simply says that the agency will not make a grant or provide funds to an agency if the

organization does not have the equal number of representatives of management and labour.

We are saying that is fine, but we want to ensure that at some point it will have proper representation from management and labour. We are making it the responsibility of the agency to move. If the organization or clinic or training centre cannot do it on its own, then the agency will set out a plan with which this association, clinic or training centre will have to comply and setting out a time frame.

Also, in subsection 5—it is very straightforward—we are just saying that subsections 3 and 4 will come into effect in one year rather than two years. We think if the agency is moving properly with regard to establishing deadlines, if necessary, this process can be completed in one year rather than having to take two years.

We agree that there must be proper representation in order for an association, an occupational health and safety clinic or a training centre to get funds from the agency, but we want the agency to take a more proactive approach in ensuring that there is proper representation in order to qualify for funds.

The Chair: Just for my education, this would not say there was equal representation on any health and safety agency.

Mr Dietsch: No, it does not say anything about equal representation.

Mr Wildman: No, it does not. Perhaps it should.

The Chair: Just for clarification, it does not say that.

Mr Dietsch: Mr Wildman is probably not interested in us adopting that.

Mr Wildman: What we are attempting to do, and I take your comment under advisement, is to ensure that labour will have the ability to negotiate the continuance of worker health and safety centres and clinics as bipartite associations, and certainly we would want to have equal representation in any association that was going to get funding. That has been one of the issues we have been raising.

We think that the health and safety clinics have operated well and should continue to operate. We do not want to see them be in any way jeopardized by a failure to arrive at proper representation. We want to make sure they get the funding, and if there is some problem with arriving at the representation that is acceptable, we do not want to see them cut off. That is essentially what we are attempting to do, while at the same time we believe that any association like

the Industrial Accident Prevention Association, should have equal representation.

We are not opposed to the question of equal representation there, but we want the agency to be involved with ensuring that there is proper representation and that the funding continues for the clinics.

The Chair: There is nothing out of order with your motion. I just wanted a clarification as to what it really meant.

Mr Wildman: That is the purpose of it. Maybe it should be reworded. You have raised a good point.

The Chair: If you want to think about that, Mr Wildman, we could, now that Mrs Marland is here—

Mr Wildman: I would appreciate it if you would give me a moment.

The Chair: Yes. We could go back to section 6, subsection 10(2), and proceed with Mrs Marland's amendment, if that is appropriate to members of the committee. Is there an agreement? I see no objection.

I think the clerk has explained to you, Mrs Marland, we proceeded with the parts of the bill which your amendment would not touch and stood down subsection 10(2), which deals with the makeup of the board of directors of the Workplace Health and Safety Agency, in anticipation that you would want to move your amendment to Mr Dietsch's proposed amendment which already has been moved and debated. If you are prepared, I would ask you to move your amendment.

Mrs Marland moves that subsection 10(2) of the act, as set out in the government motion, be struck out and the following substituted:

"10(2) The Workplace Health and Safety Agency shall consist of a board of directors appointed by the Lieutenant Governor in Council as follows:

"1. Two full-time directors, one of whom shall represent management and one of whom shall represent workers, who shall jointly act as co-chairpersons.

"2. Twelve part-time directors, of whom two shall represent small business employers, four shall represent other employers, three shall represent nonunionized workers and three shall represent unionized workers."

1140

Mrs Marland: First of all, you will notice that we have changed the wording from "labour" to "workers," because we felt the term "workers" was more representative of everyone. Obviously

we are trying to cover in subsection 2 the fact that nowhere are the unorganized or nonunionized workers' needs and opinions represented.

I know that when Mr Wilson, the president of the Ontario Federation of Labour, was before the committee, he said, as did some of the other presidents of OPSEU, CUPE and so forth, that he did speak for the unorganized workplace, the nonunionized workplace. "Unorganized workplace" is not quite the right term, I do not think: unorganized workers in the workplace.

We feel that since 70 per cent of workers are unorganized, nonunionized, this is a very important amendment and we cannot begin to imagine that the government, in its wildest dreams, would want to pass legislation where only one third of the workforce had representation on an agency that had a very direct legislative and functional power over those workplaces.

Mr Mackenzie: I have an ongoing concern that I think has been voiced, maybe not as effectively as it should. But certainly there is a point of view, represented usually by management, which has the expertise and muscle financially and expertise-wise to back up its position. Certainly there is a view that is represented by the organized workforce, which is in exactly the same position.

I have some difficulty, as always, knowing whether or not we would do any favour trying to select the unorganized workers: just who the hell they would represent, which has been the argument all the way through these hearings, and what kind of expertise they would bring with them. I can see it very quickly just being an add-on to the employers or the Canadian Federation of Independent Business or some such organization in terms of making the decision.

Hon Mr Phillips: Again, because it is a fairly fundamental part of the bill, I thought I might comment on just why we are recommending that it be composed of management and labour representing organized labour.

I think there are two or three reasons for that, and I realize there are strongly held views out there that suggest that is not exactly what everyone wants. We truly are trying to build a partnership here, and it is always difficult to find the model where that partnership will exist perfectly. But I think there is a concern by labour of getting into something that is perceived as a partnership that is not a partnership, where they in the end have only a minority vote rather than an equal vote.

Certainly there is the concern that whereas organized labour is democratically elected and does in fact represent its constituents through a well-established process, it is, for something like the agency, very difficult to visualize finding representation that would have had that broad constituency of support that organized labour has.

We are, as I say, first trying to find a partnership here where we get two parties working on something quite fundamental. I have said this before but I will say it again: I think we are looking in Ontario at perhaps a new relationship between management and labour. This is an area where I think we can prove that the new partnership can work. If we have an agency that has representation from unorganized labour, I think organized labour has grave difficulty in seeing itself being able to participate in that because we do not have representation all from organized labour.

As I say, I think it is quite fundamental. I realize there are strongly held views on the other side, but as we have looked at it, and I have listened very carefully, once again, to all the presentations that have come before your committee, we have concluded that if we want to make the agency work and work in developing the partnership, then it is going to require this equal balancing on the board.

Mr Dietsch: The motion, as it is presented, would effectively remove from the agency the chair, the safety professionals and the executive director.

Mrs Marland: I am sorry. That is not the intention of the motion. If that is how it has come out, that is not the intention.

The Chair: Let Mr Dietsch finish, please.

Mr Dietsch: As I understand the motion, it says, "I move that subsection 10(2) of the act, as set out in the government motion, be struck out." Subsection 10(2) of the act includes all those things, and if this motion was passed, it would effectively do away with those kinds of things. I appreciate the interjection, because the member said twice on the record last week that she was very much in support of the nonvoting, neutral chair, and the resolution sort of caught me somewhat by surprise as to whether there was a change of opinion or just exactly what was happening in that regard. Perhaps we could get an explanation.

Mrs Marland: I think what we are into now is an indication of the fact, again, that the whole process with this bill is wrong. I am referring to

the fact that we are a caucus of 17 and we have the staff that we are allowed with a caucus of 17, and frankly, my amendment has not been worded correctly. It is not addressing what I wanted it to do, but it is part of the problem with finishing hearings on one afternoon and starting the amendments on the next afternoon. I am sorry, because obviously I did not want to have all of subsection 10(2) struck out. Obviously there has to be a chair.

But the main thing that I was trying to address in my motion is the fact that all the way through the government motion it is referring to representation of labour and management. It does not define whether the labour is organized or unorganized, it just says "labour." If the minister can assure me that where it says "labour" it could include "organized" and "unorganized," then I can leave it the way it is.

Hon Mr Phillips: I think I have made it clear in my remarks, when we are referring to labour on the agency, we are referring to organized labour.

Mrs Marland: Okay. I am trying to mess around with this now while we are talking about it, which is not easy for Laura or for me, and thank you for being able to help.

I am in favour of a neutral, nonvoting chair—obviously an agency has to have a chair—but I cannot understand the content of the meaning, in terms of English grammar, from the minister if he talks about partnership and equal balancing and you are only talking about two parts of a three-part situation. How can you talk about having a partnership in legislation that affects everybody who works in Ontario, yet you are only going to be dealing with a partnership between management and a third of the workforce, if you are really going to ignore representation from nonunionized workers in this province?

1150

I understand where my New Democratic Party colleagues are coming from. I understand that very clearly and I do not have any argument with them, because their argument has a base, but your argument has no base. You are the minister for everyone who works in this province. You are not a New Democratic member who represents unionized workers in this province. I think it is incredibly unfair that you would be in favour of an agency that ignores two thirds of the workforce. How can it be a partnership and how can there be equal balancing, to use your own words, when you have only two parts of a three-part situation? How can you ignore two

thirds of the workforce, if you want me to put it more simply?

Hon Mr Phillips: I think in my remarks I have been fairly clear. I guess I just say that we have in the Ontario workplace organizations that have been duly elected by the workplace that do represent those workplace parties—we are certain of that—and that I think they do not speak just for the one third in the health and safety matters. I think they do have a voice that is worthy of being heard for all the workers of Ontario. So, for the reasons I outlined earlier, one being that we have a duly elected body in the province, by workers, that is not only representative of them but also, I think, has shown a keen interest in health and safety in the workplace—I think, second, that it is important that we have their participation in health and safety in the province and that the agency is the way to do that.

Mrs Marland: I will be very brief. I just want to finish this.

There is no question that it is very important that those people who are organized speak for health and safety in the workplace, and there is no question that the unions have developed, through their own investment, an organization that looks very extensively into health and safety in the workplace. To use your own words, they are duly elected. But what you are doing with this agency the way you are setting it up now is disenfranchising people who do not pay union dues. That is the bottom line.

I know the argument has been, how would we select somebody from the unorganized workplace; who would they be? The government members said it would be somebody from the Canadian Federation of Independent Business. You are not even giving the unorganized workforce a chance to develop some kind of formula by which they could have maybe rotating representation. If it is only three people, they could rotate it annually to cover different sectors of the workforce in Ontario that is nonunionized.

I think it is very clear that the Liberal government is saying, "Okay, we're going to listen to management and we're going to listen to unions and we're not going to listen to the other two thirds of the workforce." That is your decision, and of course I have to accept that decision. It is fine for the Ontario Federation of Labour and some of these other organizations to say they are concerned about everybody, but the fact of the matter is they are committed to their members and their members pay dues for that kind of representation.

I am totally in disagreement with you, and that is why the motion is there to include that kind of representation, but I accept the fact that you have made a decision that a partnership is two parts of a three-part pie and that is how you are going to do it.

The Chair: Is it your desire to proceed with the amendment or withdraw it, Mrs Marland?

Mrs Marland: I will proceed with it. I will add, however, that I do want to leave in the fact that there would be one chair—a neutral, nonvoting chair—because obviously there has to be.

Mr Wildman: I am a little confused right now, and I understand the difficulty of Mrs Marland just walking in and having to deal with this now, but is she going to move a further amendment to her amendment to deal with the nonvoting chair?

Mrs Marland: Have you discussed the nonvoting chair?

Mr Wildman: We have discussed it, but we have not voted on it.

I was just going to say, Mr Chair, that from our point of view, we would like to see the vote on this amendment as it now stands split, the vote on subsection 1 and subsection 2 separately; the reason being that we are opposed to the neutral chair and we like this amendment in subsection 1.

I would say very clearly that we agree with the remarks made by the minister in his last response to Mrs Marland; that is, that the representatives of the organized workforce in this province who appeared before the committee made very clear what they understand to be a partnership as it is being proposed in this bill. They have also demonstrated over the years a commitment to occupational health and safety in the workplace, not just unionized workplaces but in workplaces throughout the province, and have raised issues on occasions about health and safety in workplaces they do not represent. So I agree with the minister that when he says "labour" or "workers," in fact it should be and it is understood to be organized workers in this province.

At the same time, as we said earlier, we support the internal responsibility system all the way through in this bill and we believe it should be a bipartite operation. We accept subsection 1 as written and could support it. However, we could not support subsection 2, so we would like to see the vote split and have two votes.

I would also like to ask a question with regard to subsection 2. Is it not now the case that,

without this being part of the bill, the Lieutenant Governor in Council can appoint, and if he chooses to appoint as part of the employers' representatives two small business people, he can do that? He is going to do it in consultation with management representatives. He could in fact represent small business on the agency without having to have subsection 2 passed.

We would certainly support the minister's position that the workers in this province should be represented by organized labour and their organizations.

The Chair: Thank you, Mr Wildman and Mrs Marland. I wonder if I could make a suggestion to members of the committee. There is Mr Wildman's amendment, which he was reconsidering, and there is Mrs Marland's, which she is reconsidering. Would it be appropriate to break now for lunch so that when we come back at two, that can be sorted out?

Mr Wildman: For your information, I have reconsidered and my amendment stands.

Mr Dietsch: Can we not get through with this particular part? I would like to get through with 2, which we stood down in recognition of Mrs Marland's absence.

The Chair: Mrs Marland, are you ready to deal with yours now?

Mrs Marland: Yes, I am.

The Chair: All right. Let's do that. You have the floor.

Mrs Marland: And then I will have another one.

The Chair: So have you basically withdrawn the one amendment and you are going to put a new one? Is that what you are telling us? I think that is what you should do, and then simply move the reworded amendment.

Mrs Marland: That is right.

The Chair: Perhaps you would indicate that.

Mrs Marland: I will withdraw the one that you have.

The Chair: Thank you.

Mrs Marland moves that clauses 10(2)(b), 10(2)(c) and 10(2)(d) be struck out and the following substituted:

"(b) Two full-time directors, one of whom shall represent management and one of whom shall represent workers, who shall jointly act as vice-chairpersons.

"(c) Twelve part-time directors, of whom two shall represent small business employers, four shall represent other employers, three shall

represent nonunionized workers and three shall represent unionized workers.”

All those in favour of Mrs Marland’s amendment to the amendment, please indicate. All those opposed?

Motion negatived.

The Chair: We now move to the balance of subsection 10(2). Shall subsection 10(2), as amended by Mr Dietsch, carry? Carried.

We now go back to Mr Mackenzie’s motion, which would have amended, I believe, Mr Dietsch’s amendment, and we had stood it down temporarily.

Mr Wildman: I had indicated that we would reconsider. We have done that and we have come to the conclusion that it should stand. The purpose of the amendment, as is obvious, is to give the agency more power to determine proper representation and to ensure that proper representation takes place within a certain time frame in order for it to be eligible for grants and funding. We are not going to set out here, further than we

have in this amendment to the amendment, how the agency should proceed to ensure proper representation.

The committee divided on Mr Mackenzie’s amendment to the amendment, which was negatived on the following vote:

Ayes

Mackenzie, Wildman.

Nays

Bossy, Callahan, Dietsch, Lipsett, Marland, Pelissero, Riddell.

Ayes 2; Nays 7.

The Chair: We now proceed to Mr Dietsch’s motion to amend. All those in favour of Mr Dietsch’s motion, please indicate. All those opposed?

Motion agreed to.

Section 6, as amended, agreed to.

The committee recessed at 1205.

AFTERNOON SITTING

The committee resumed at 1410.

The Chair: The standing committee on resources development will come to order. The minister indicated before lunch that he would be a few minutes late, but that we should proceed anyway. Mr Millard is here. What more could we ask?

We back up a little bit to section 32 of the bill. Is the committee prepared now to proceed with section 32?

Mr Mackenzie: I wonder if we can hold off and cut in maybe half an hour down the way. I would like to talk to a couple of people.

The Chair: Okay; no problem. How about subsection 4(7)? Do you want to leave that for a little bit too? Okay, we will leave those stood down and we will now move to section 6b. There is a government motion.

Mr Dietsch moves that the bill be amended by adding the following section:

"6b. The said act is further amended by adding thereto the following sections:

"10d(1) The Workers' Compensation Board shall transfer annually to the agency at the beginning of each fiscal year of the board an amount determined by the Lieutenant Governor in Council.

"(2) The amount to be transferred at the beginning of each fiscal year shall not exceed 110 per cent of the amount transferred at the beginning of the preceding fiscal year.

"(3) If an occupational health and safety medical clinic, a safety and accident prevention association or an occupational health and safety training centre is designated for the purposes of clause 10c(1)(n) in one fiscal year, the amount to be transferred at the beginning of the next fiscal year may be greater than the amount permitted under subsection (2).

"(4) The amount paid by the Workers' Compensation Board under subsection (1) shall be assessed and levied upon such employers or classes of employers in schedules 1 and 2 of the Workers' Compensation Act and in such manner as the board considers appropriate.

"(5) The costs and expenses of the agency before the beginning of the first fiscal year of the board after this section comes into force, up to a maximum of \$1.5 million, shall form part of the administration expenses of the Workers' Compensation Board.

"(6) The amount to be transferred under subsection (1) at the beginning of the first fiscal year of the board after this section comes into force shall not exceed \$53 million."

Mr Wildman: I am trying to co-ordinate this with the original bill. The original bill is changed because of a previous government amendment, so could you explain what the main thrust of this is and what it means in terms of dollars?

Mr Dietsch: Basically, the intent of the motion is to address, first, the requirement of putting a cap, if you will, on the amounts of money that are transferred over to the safety agency. But in the next outline, in the exception, if for example there was a requirement for an additional safety association or a training centre that would be taken into consideration, an opportunity to gain more dollars for that particular training centre or agency.

In relationship to the cost of the agency, it is basically startup funding for the agency, to be able to fund its operation in the interim, being able to address its own needs up until such time as there is the full complement. There is a transition period in 1990 for the associations being funded by the Workers' Compensation Board, and this allows startup funding for the agency in that respect. That pretty much explains the requirement.

Mrs Marland: I read this government motion as being more than startup funding, because it talks about, "The Workers' Compensation Board shall transfer annually to the agency at the beginning of each fiscal year of the board an amount" to be determined. Now, that is not startup funding; that is annual.

Mr Dietsch: That is right.

The Chair: Check subsection 3 under "Exception," though, Mrs Marland.

Mr Dietsch: That is the exception. Which section are you looking at?

Mrs Marland: I am looking at 10d(1) to start with.

Mr Dietsch: After the startup, of course, then with the funding in 1991, when the agency itself will take over the responsibility of the safety associations and the training centre, it is necessary for them to have the funds to fund those groups. I guess you are right in terms of pointing out that that money would be transferred to the agency on an ongoing basis after that. Yes.

Mrs Marland: Right; that is what I am saying.

Mr Dietsch: There are three points really, the first point being the requirement for startup money for the association, the second point being an opportunity if there was a requirement for additional training centres or additional safety associations, and the third point being ongoing funding for all the safety associations and training centres that fall under the agency.

Mrs Marland: What we are saying is that the implementation of this bill, the cost of the agency, which is the main part of the implementation of the direction of the bill—obviously the agency is going to be the pivot around which the enactment of the bill evolves—is going to be funded by the Workers' Compensation Board.

Mr Dietsch: Yes.

Mrs Marland: Did the government look at any other way of funding this agency?

Mr Millard: It did look at ways to fund the agency and alternative ways to fund the agency inasmuch as—I think it was 24 January 1989 when we had first reading of this bill—we looked at \$46.6 million as the portion that was at that time spent by the Workers' Compensation Board for the activities of the safety associations that will come under the authority of this agency, by the Workers' Health and Safety Centre and the Occupational Health and Safety Education Authority.

All of those expenses total \$46.6 million and those were paid for from assessments through the Workers' Compensation Board. By 1 January 1991 we are looking at \$53 million based on this year's and next year's anticipated WCB funding to the safety associations, to the Workers' Health and Safety Centre, and funds for first aid training. That is the reason we arrive at \$53 million. Those are not new funds. Those are funds that are presently spent by the WCB on these activities that will now come under the administration of the agency.

We create in the act for the remainder of this year, in anticipation of the passage of this act, that the safety associations and the Workers' Health and Safety Centre shall continue to be funded as if they continued to be under the direction of the WCB. Thus they will continue to receive their allotments from the WCB for the remainder of this year.

For that part of the agency that will become the administrative part to oversee these associations, we have allowed a billing procedure, if you will, to a cap of \$1.5 million to the WCB with the full anticipation that the total expenditures will not

exceed those already planned by the WCB for this fiscal year as well.

Let me add that some funds will go to the agency from those that are presently allocated to the Ministry of Labour towards funding and grants for research, for instance, and the medical clinics. Those will come by way of Management Board allotments to the agency.

1420

Mrs Marland: Have you any figures or projected figures as to the cost of training the certified workers in the 30,000 additional workplaces?

Mr Millard: The costs of the development of the training material are to be borne within the proposed allocation to the agency within the \$53 million. The cost of paying the lost time of workers, if you will, for construction workers in the proposal that was endorsed and passed just this morning, would allow for those to be paid by the agency from within this existing allocation.

For the rest of the industrial workforce, wages would be paid by the employer. I cannot give you an estimate of the total cost to employers because the criteria for the training have not yet been developed by the agency. Thus the amount of time required for the training is unknown, but if one were to look at some ranges, if you looked from one day to 10 days to 20 days, you would simply have to multiply 40,000 to 50,000 joint health and safety committees times two, inasmuch as one worker and one management representative are to be trained, and multiply that by the average industrial rate of pay in the province.

Then amortize that over somewhere from five to 10 years, because we have said all along that it is very unlikely you would have a certified member in the sectors for a minimum of three years in any one sector. You need to amortize those training costs over a number of years, five to 10 years, for that entire number of people to be trained. I think one might reasonably look at a cost of perhaps \$10 million to \$15 million per year in that kind of amortization scheme for employers to pay for training. It may be more than that.

If one looks at the \$2 billion employers paid into the workers' compensation fund last year, one will see that there need be only a very small improvement in the accident rate in this province to recuperate that investment very quickly for employers.

Mrs Marland: What you are saying is that you have not actually worked out what it is going to cost.

Mr Millard: Yes, we have worked out a number of ranges. As I said, we cannot fully anticipate what the training and criteria will be for certification, but we have worked it out on a number of ranges and I would be happy to bring back those ranges tomorrow. I do not have them with me, but we have worked them out based on one day's training up to 10 days' training for certification. We could go beyond that in terms of what might be appropriate for certification in some sectors.

Mrs Marland: Why are we passing legislation for which we do not know, first of all, what the requirements are going to be? We are going to name an officer in here, and that is the certified worker, and we do not know how long it is going to take to train him. If we do not know how long it is going to take to train them, the government obviously has not established what standard of qualification that individual is going to have, yet through legislation we are empowering them with a certain responsibility.

Mr Dietsch: It has been spelled out on a number of occasions already that the agency is going to develop the certification requirements and the association is going to deliver those particular requirements of certification and training. The agency has not had an opportunity to do its job in terms of coming up with the parameters for that kind of education yet. Obviously, until the agency completes its task, you cannot very well strap them in until you give them enough opportunity to complete the task the way it should be done, properly.

Mrs Marland: You are going to let the agency set the ground rules for what a certified member is.

Mr Dietsch: In consultation; that is right.

Mrs Marland: What qualifications they are going to require is going to be set by the agency. Do you have a time line that you are giving the agency to develop those criteria?

Mr Millard: The timetable will be laid out in any memorandum of understanding that goes from the minister to the agency with respect to its submission of a plan to the minister.

Let me just clarify one part. The authorities that accrue to a certified member, in terms of what procedures are in place, do not occur until the minister requires, by regulation, that there be certified members on joint health and safety committees in those classes of workplaces. That will be the first responsibility for the agency, to submit a plan to the minister laying out its

timetable for developing the criteria within the delivery of the training for certification.

Mrs Marland: Is it possible that this process might take a year before the minister issues the requirement for certified members in the workplace?

Mr Millard: Is it possible? That will be very much dependent on how quickly the agency comes into being and how quickly the agency can exercise or fulfil its responsibility to submit that plan to the minister.

Mrs Marland: I know. It is pretty open-ended, is it not? In the meantime we are going to increase the assessment to the employers by \$9 million to fund this. You have said you are going from \$46 million to \$53 million.

Mr Millard: The \$53 million represents the amount it is anticipated would have been spent by the WCB on these activities in 1991.

Mrs Marland: In any case.

Mr Millard: Yes, in any case.

Mrs Marland: If that is what they would have spent on these programs in any case, then why is there going to be a cost to the employers to train these certified members?

Mr Millard: The cost of development of the material and the delivery of material was covered within that \$53 million, just as happens right now with a number of the safety association programs or the Workers' Health and Safety Centre programs. When workers or supervisors are sent for that training, they pay for their workers' time or their supervisors' or managers' time while they are taking that training. That is the cost to the employer I was referring to.

Mrs Marland: The only thing the agency is going to provide to the employer is physical materials. The employer bears the cost of the amount of time his staff spend there taking the courses.

Mr Millard: Yes, as is presently the case with almost all training that takes place.

Mrs Marland: I am just making sure, Mr Dietsch, what it is going to be after the legislation has passed.

Mr Dietsch: I am just trying to be helpful to you.

Mrs Marland: That is fine. I am dealing with this bill—

Mr Dietsch: We all are.

Mrs Marland: I just want to make sure that we understand what this bill is about. Until we know what the agency is going to require in terms

of training these certified members, we do not have any idea what it is going to cost employers around this province to have certified members, except you said something about between \$10 million and \$15 million.

1430

Mr Millard: We have worked it out in terms of a range of possible costs based on the amount of time that would be required for certification.

Mr Mackenzie: Surely the importance at this point in time is getting the agency in place, making sure that it is funded and starting our attack on the whole issue of what is happening in the workplace. That has to be a top priority. I think speed is important and I think the expertise is there on both sides. I know it is there on the union side; I suspect it is there on the management side as well, but unless we get moving on it, we are not going to see the results or the benefits of any legislation.

Hon Mr Phillips: I gather that the concern of Mrs Marland is the cost to the employer. Just so you know, I have talked to an awful lot of different groups over the last several months, and I have talked to organizations where management and labour both feel they have a good program in place for dealing with health and safety. In every case, I asked the employer, "Okay, this costs money. It is quite apart from the human benefits of it. Is this a good investment of your money? Would you regard this as a good financial investment?" as I say, quite apart from dealing fairly with employees. Without exception, they say it is one of their very best investments.

The second thing is that I think we must recognize that most organizations already do some form of training. We think that having the agency working with the safety associations actually can improve, in many respects, the productivity of training rather than organizations not having a well-developed plan in place. They will have it.

I am satisfied myself that in addition to its being the right thing to do in terms of reducing accidents in the workplace, without exception, the employers will say it is a good investment of their resources, time and money.

Mrs Marland: I do not think there is an employer in this province that you could speak to that would disagree with enhanced health and safety through education of its employees. One of the things that we heard through our committee hearings, which your staff may or may not have had an opportunity to convey back to you,

however, is that they do not need another tier of bureaucracy to tell them how to do their business. What they have said is that if the present legislation was enforced equally through regular inspections across the province, some of the terrible examples that were brought to our attention may have been avoided in terms of terrible hazards and accidents in the workplace.

Hon Mr Phillips: But they often are the same individuals who might say, "You should be encouraging the workplace parties to work these things out and not imposing more and more bureaucracy in the form of inspectors on us."

What this is attempting to do is to facilitate the workplace parties working their health and safety out between themselves, as opposed to, as I say, imposing more and more bureaucracy on the workplace. Quite apart from the fact that we think it works better, I would think that many of them would also be more inclined to be saying, "Rather than adding more people to the public inspectorate, we would prefer that we have mechanisms where we can work a made-in-our-environment solution." That does not mean there is not a major role for inspectors to play, but I think we are trying to encourage the two workplace parties to work through their solutions.

Mrs Marland: May I just ask you one final question and then I will leave this section. You said in your speech that the bill requires some 30,000 additional workplaces, although in your rebuttal to me last week you said it was not an additional 30,000. But in fact the wording of your speech does say 30,000 additional workplaces as a result of this bill.

If that is so, and this section of the bill we are dealing with now establishes how the cost of the agency will be borne, can you tell me how the agency is going to be able to do its job through its certified workers in 30,000 additional workplaces without a monumental increase in inspectors? You did say last week that you were going to deal with it through increased workload, which I hope was an off-the-cuff response. It is evident that the existing inspectors in the province cannot bear an additional workload, because from what we were told, they do not get around to enough places as it is.

Very seriously, for your bill to be implemented through the agency, which, as you have just described, is putting it into the workplace rather than the bureaucracy, there are sections all the way through where we have heard how this will work and, when necessary, a government inspector may still have to be called. Can you tell me

how you are going to do that in 30,000 additional workplaces without a commitment to increase the number of inspectors substantially?

Hon Mr Phillips: What I think I said the other day is that we are going to move from joint health and safety committees in, we think, approximately 20,000 workplaces to joint health and safety committees in approximately 50,000 workplaces. That is true. The joint health and safety committees do not involve having our inspectors as part of them. They are a bipartite arrangement between the two parties.

What I said the other day was we think, in order to help facilitate this, we are going to need some increased resources over the short term. However, over the long term it is our expectation that this bill—and it is the essence of this bill to put increased onus and responsibility on the workplace parties to work through health and safety. It is our hope that the improvement will come by forging those partnerships in the workplace.

Another thing I said the other day is that this does not mean that the Occupational Health and Safety Act now applies only to 50,000 workplaces. It applies to all the workplaces, but we will have joint health and safety committees now in 30,000 more workplaces than we had before, from the point of approximately 20,000 to 50,000.

It is going to require, we think, some increased resources by our ministry over the short term to help facilitate that. Over the long term, though, we think that the agency and the internal responsibility system with these increased mechanisms and increased responsibility will be picked up by the two workplace parties.

Mrs Marland: What are you going to do for your increased resources in the short term?

Hon Mr Phillips: For the agency, we have already talked about that and we suspect we are going to need some increased inspectors over the short term to give the organizations a hand to get rolling.

Mrs Marland: That is what I have been wanting you to say, not increased workload for the existing inspectors. You finally said “increased inspectors.”

Hon Mr Phillips: Maybe I misspoke or you misheard. I think the other day I did say we were going from 20,000 to 50,000, that we do see that over the short term there will be an increased workload. Over the long term, we see the workplace parties picking up more responsibility. The thing to keep emphasizing is this act applies to all the workplaces, not just the 50,000

workplaces with the joint health and safety committees.

Mrs Marland: It is an increased workload for your ministry, though, not for the existing inspectors. That is what I am getting at. You are going to hire more inspectors.

Hon Mr Phillips: I think over the short term we will need a few more.

The Chair: Any further debate on the proposed amendment by Mr Dietsch? If not, are you ready for the question?

All those in favour of Mr Dietsch's proposed amendment? Opposed?

Motion agreed to.

The Chair: We now have a government motion. It is also an addition to the section.

Mr Dietsch moves that the bill be amended by adding the following section:

“6c. The said act is further amended by adding thereto the following sections:

“10e(1) The associations formed under section 123 of the Workers' Compensation Act before the coming into force of this section, except for the Farm Safety Association of Ontario, are continued under the authority of the agency.

“(2) The Lieutenant Governor in Council may, by regulation, transfer responsibility for the Farm Safety Association of Ontario to the agency, in which case this act applies to the association and the Workers' Compensation Act does not apply to it.

“(3) The Workers' Compensation Board shall continue to make payments and grants to and on behalf of the associations referred to in this section as if section 123 of the Workers' Compensation Act, as it read immediately before subsection 33(2) of the Occupational Health and Safety Statute Law Amendment Act, 1990 comes into force, continue to apply to the associations.

“(4) Subsection (3) is repealed on the date the Workers' Compensation Board makes the first transfer under subsection 10d(1).

“10f(1) No grant may be given under clause 71(3)(j) of the Workers' Compensation Act to an organization that receives or that is eligible to receive funds or grants from the agency under clause 10c(1)(o).

“(2) Subsection (1) does not apply with respect to the period before the Workers' Compensation Board makes the first transfer of funds under subsection 10d(1).”

1440

Mr Wildman: Perhaps we might have a guided tour through this labyrinth of legalese.

Mr Dietsch: Do you want it from the person who wrote it?

The Chair: You are asking for an explanation of the amendment, I gather.

Mr Wildman: Yes.

The Chair: I am just a farm boy. I need a translation.

Mr Millard: Thank you, Mr Chairman. Subsection 10e(1)—under the Workers' Compensation Act, section 123 is the section under which the associations may form themselves and be funded. This section allows the farm safety association, which will not come under the aegis of the Workplace Health and Safety Agency, to continue under that section in the Workers' Compensation Act to allow at such time it may be appropriate, by regulation, for the farm safety association to be brought under the aegis of the Workplace Health and Safety Agency.

Subsection 10e(3), as I, in a somewhat convoluted way, tried to explain earlier, allows the Workers' Compensation Board to continue to fund those safety associations that are incorporated under section 123 to continue to be funded during this transitional year until the first full payment is made from the Workers' Compensation Board to the agency.

Subsection 3 is repealed on the date that the Workers' Compensation Board makes the first transfer under subsection 10d(1). That means that once the \$53 million is paid over, that section discontinues, of course, because you would not want the Workers' Compensation Board paying twice.

Subsection 10f(1): under the Workers' Compensation Act, clause 71(3)(j) allows programs to be funded under the Workers' Compensation Act, and it simply says that if they are eligible for receiving and do receive funds from the agency, they should not be eligible for funding under the workers' compensation funding program. Of course, that subsection does not apply with respect to the period before the Workers' Compensation Board makes that first transfer of \$53 million.

Mr Wildman: Perhaps the parliamentary assistant or the minister could explain why the government chose in drafting this amendment not to sunset subsection 1.

Hon Mr Phillips: I can speak to that. I think some other comments we have probably had in this committee a fair discussion around farm safety. I think there is clearly a high level of interest in how we improve safety on farms. I think the challenge we have is that as this bill

went forward for discussion, it did not include a substantial discussion on how we improve farm safety. Therefore, we have had relatively little debate about it.

I think I said the other day here, Mr Chairman, that it is an item of interest obviously to myself and the government, but it is one which we are not prepared, at this stage, to move on until we have had much further dialogue and discussion. What this does is give us that flexibility. If at some stage in the future we believe it is time to move the farm safety association under the agency, we have that flexibility to do it. But until we have had that thoroughly discussed and debated in the Legislature and, I suspect, in some public forums, we are not in a position yet to be moving in a more comprehensive way on farm safety.

Mr Wildman: I do not know whether it is appropriate or not, but I will ask it anyway. I understand that there is a task force on farm safety which has been looking at ways of improving farm safety in Ontario for some time. I was wondering if it would be appropriate for the committee to request at some point some information from the ministry as to what is happening with that and why. That might help to explain why the exception has been made in this section.

I am not saying necessarily right now. I do not know whether Mr Millard needs more time to come up with that or whether he can do it right now. It is up to you.

Mr Mackenzie: If he is going to respond, there is one other area that might tie in with it at the same time. One of the concerns I have with not moving the farm safety association under the agency along with the others, or immediately, is, how many times are we going to get stuck? If I remember the details correctly, the only real investigation done in terms of the mushroom worker in Windsor who lost her life and the inability to get hold of the report or the safety inspection or whatever was done by the farm safety association, as I understand it, and whether or not that is still going to be a situation we will face. It seems to me there has to be some way to get hold of the information, when there is a situation such as a death of a farm worker, as happened recently down in Essex county.

The Chair: I gather the report is completed now.

Hon Mr Phillips: I do not think it is totally completed, although I think they have done a fair bit of their work. If it would be helpful to the

committee, I am sure we can, tomorrow, review the current status of that.

Mr Mackenzie: That is really what I wanted to touch on.

The Chair: Okay. Ready for the question?

All those in favour of Mr Dietsch's motion, please indicate. Opposed?

Motion agreed to.

The Chair: Mr Dietsch moves that the bill be amended by adding the following section:

"6d. The said act is further amended by adding thereto the following section:

"10g(1) The Lieutenant Governor in Council may appoint an occupational health and safety adjudicator who shall carry out the duties and exercise the powers of the adjudicator under this act.

"(2) The adjudicator may delegate in writing any of his or her powers or duties, subject to any limitation or condition set out in the delegation."

Mr Wildman: I have a couple of questions. As I read this amendment, am I correct in understanding that there will be one adjudicator?

Mr Dietsch: Yes.

Mr Wildman: Sort of like an ombudsman for occupational health and safety, one adjudicator.

Mr Dietsch: You have to tie in section 2 of the act as well, and there will be one adjudicator. Under the delegation aspect of it, if there is a requirement at some point in the future where there is a necessity to have more than one, then that adjudicator has an opportunity to expand those roles.

1450

Mr Wildman: Okay, so in subsection 2, "The adjudicator may delegate in writing any of his or her powers and duties, subject to any limitation or condition." Does this mean that you could have deputy adjudicators who are exercising the powers of the adjudicator in his or her stead with regard to certain aspects of the adjudicator?

Mr Dietsch: Yes.

Mr Wildman: Okay, so when you say "subject to any limitation or condition set out in the delegation," is it up to the adjudicator to determine the limits or conditions?

Mr Dietsch: Yes.

Mr Wildman: I am not questioning this, I am just wondering, could you end up with a situation—I will use an extreme—where you have one adjudicator heading an enormous bureaucracy of 100 people carrying out the responsibilities

of the adjudicator in the province? Some people might not consider 100 enormous.

Mr Dietsch: I stand to be corrected, but my understanding is that it was not designed to address that kind of scenario. Moreover, it was designed to be able to recognize the possibility that there could be an additional requirement for an adjudicator, based on the kind of workload of the cases that would be put before them.

Mr Wildman: Okay, fine.

Mr Mackenzie: Further to the same line of questioning, is it the question of one safety adjudicator might or might not pose a problem? Has there been any thought given to a panel of adjudicators, similar to what you might have in terms of arbitration, that would be acceptable?

Hon Mr Phillips: I think no one knows that. I think a good solution to some challenges we have had dealing with the act—one is where an inspector has made a decision and there is a feeling that the appeal of that decision was too closely aligned to the ministry. Second, as you all know, there are some other roles in here in terms of decertification and the designation of various companies.

In debating that, I think we felt, in order both to have as much independence as we could but also to ensure us a process that would be seen to be independent but efficient, that we would stick with a single adjudicator. As has been pointed out, we do not know what the workload of this adjudicator might be and therefore we have given ourselves the option of having the adjudicator delegate his or her responsibility to someone else. But in the main, we have structured this as a single-adjudicator process for both efficiency and manageable workload reasons.

Mr Mackenzie: I am just curious as to whether the minister thinks it would work the other way as well or not. I am not necessarily suggesting it, but I think it is an area that may be a problem down the road.

Hon Mr Phillips: This is quite a significant step to move it to what we will regard as independence, and although we do not specifically say it is one of the areas to review in three years, it will be one that we will be watching, obviously, to see how well it does work, and if there ends up being some problems, we will be looking for ways to improve it down the road. But I believe this will be seen both as independent and effective. It should work, but clearly, as we work through the bill, if it is not working effectively, it would be one of the things we would consider looking at.

Motion agreed to.

The Chair: Mr Dietsch moves that the bill be amended by adding the following section:

"7a. The said act is further amended by adding thereto the following section:

"11a(1) The minister shall appoint one or more advisory committees to propose procedures to be used in workplaces and circumstances described in subsections 23(1) and (2) in order to protect workers in the circumstances described in subsection 23(3).

"(2) An advisory committee shall include an equal number of representatives of employers and of workers employed in the types of workplace to which the proposed procedures would apply."

Mr Dietsch: Mr Chairman, you will recall when we were on the road and hearing a number of presentations before this committee from individuals in correctional services and ambulance attendants and others, health care workers, who felt that this bill did not address their needs. In recognition of some of the presentations and briefs that were put before the committee, this motion is to address the requirement of a committee or committees to look into those particular areas in trying to come up with a proactive type of protocol to address those kinds of concerns that were addressed.

Mrs Marland: Is it the intent of the government that this section apply to those government employees who are exempted from the bill?

Mr Dietsch: Yes, that is what I just said.

Mrs Marland: Like firefighters, policemen, ambulance officers. Is that to whom this section would apply?

Mr Dietsch: That is correct, yes.

Mrs Marland: It says, "shall appoint one or more advisory committees." Is that one or more advisory committees for the whole province or for each workplace?

Mr Dietsch: I am not sure I quite understand the question.

Mrs Marland: I am only going by the words on the printed paper.

Mr Dietsch: Yes, the appointment of the advisory committees?

Mrs Marland: Yes. It says, "to be used in workplaces."

Mr Dietsch: The point is that it is recognized that there is a difference of workplaces.

Mrs Marland: I hope so.

Mr Dietsch: Actually, it would be recognized by you, I am sure, that there is a difference in the

workplaces, by your own admission, and it may be required that we have a committee that looks at each particular issue that is being dealt with by sorting out the differences between whether they are ambulance attendants or correctional officers. The same rule would not apply in dealing with ambulance attendants as in dealing with correctional officers, so it may require a committee for correctional officers and a committee for ambulance attendants. One committee would not work in that particular instance, because it would not be familiar with the rules of operation. That is the reason why it spells out more than one committee.

1500

Mrs Marland: I do not think the wording of your amendment is very clear. I hear what you are saying it means, but I do not think it is very clear. It says, when it describes the membership, "An advisory committee shall include an equal number of representatives of employers and of workers employed in the types of workplace to which the proposed procedures would apply." Does this mean that there may be a problem in one air ambulance operation in the province so you are going to have one advisory committee for air ambulances because they are very specific and very specialized?

Mr Dietsch: The intent behind the committee is to draft up a set of guidelines which individual workers would be able to go by, a proactive protocol in terms that if they discovered a difficulty on their particular job, that committee would come up with a set of guidelines which they could follow to bring corrective actions to whatever the situation was that they found was causing their problem.

Mrs Marland: Right, and then if they do not get a remedy or a corrective action, to use your own words, if they do not get a remedy to resolve their problem and the air ambulance officers are still told that they have to board choppers that they know may be airworthy but do not have the equipment that they need on board, what is their route of appeal as public employees?

Hon Mr Phillips: It might be useful to run through some of the background on this, because I think if you could get an idea of how we see this working behind the words, it may be useful.

Mr Millard: The committees that are anticipated are anticipated by sector of workplaces. It is anticipated that, as has started to take place with people in the correctional services area, it is attempting to develop with a provincial committee protocols and procedures that would allow

them recourse to a higher level of decision-making authority within the structure of their workplace when they are confronted with a situation that constitutes what they believe is a likelihood to endanger.

Of course, with a significant public risk element here, it is considered that those employees are not very often going to see other than a theoretical level of protection in a right to refuse. Let's give them a practical application that they can use to have their concerns addressed by someone other than that person who immediately directs them to do that job. So the procedure, we hope, would be a protocol for having your concerns addressed within the line of command in that workplace and being able to seek the kind of second opinion, as it were, that would allow you to express your concerns and have your concerns dealt with.

It is very, very tricky to try to find any one right answer for all of the kinds of workplaces out there and that is why we say, by sector, that we would establish these committees and have them jointly develop recommendations for the minister. This needs to be read in concert with section 32. I think it is section 33 that allows the minister, if I can just flip to that part, to make regulation requiring that the employers then comply with the prescribed procedures to be used in workplaces and circumstances described in subsections 23(1) and 23(2) in order to protect themselves from those situations that they believe are likely to endanger them. So it would allow us, at the provincial level, to have the minister regulate a procedure in those workplaces so that they could seek redress of their concern.

Mrs Marland: Where does it say in this amendment "by sector"? It does not say that, I do not think.

Mr Millard: I think inasmuch as you have reference to subsections 23(1) and 23(2), and thus you are referring to people employed in the police force, you have reference to people employed in the fire departments, you have reference to persons employed in the operation of a correctional facility and then you have hospitals, sanitariums, nursing homes, residential groups, ambulance service, laboratories operated by the crown, laundry, food service, power plant, etc., that is the intention. So you can, in terms of referencing each one of those classes of workplace in subsections 23(1) and 23(2), create an advisory committee for each and every one of those.

Mrs Marland: Okay. Let's get back to an example that I gave. If we are talking about an advisory committee for each and every one of those sectors and a problem arises in Timmins with air ambulance officers who have a particular problem with the contracted helicopter company and they feel that it is unsafe for them and for the patient and they refuse work, are they then to appeal that workplace in Timmins to one advisory committee in the province for that work sector?

Mr Millard: No. As this section, read in concert with the regulation-making authority, will say, the minister then will be able to regulate the procedure for those kinds of workplaces. Then our inspectors can administer those regulations and can enforce those regulations, and the advisory committee, once having made its recommendations to the minister, would have served its purposes for this act, and then it would be the minister's responsibility to regulate that procedure for those kinds of workplaces so that it could be administered across the province for all those types of workplaces, just as we administer regulations right now through our inspectors. So it would be administered locally by an inspector.

Mrs Marland: Okay, but maybe I am still not clear, because when we talk about an advisory committee here made up of representatives of the employer, the employer is the government, right? Obviously.

Mr Millard: In some circumstances; not in all.

Mrs Marland: For municipal firefighters, the employer is the municipal government.

Mr Millard: Yes.

Mrs Marland: For police forces, it is still a municipal or regional government jurisdiction with these forces.

Mr Millard: Yes.

Mrs Marland: And with ambulance operators, there are a few that are private, but the majority of ambulance officers, I think, are still coming under the provincial government.

Mr Millard: But there are also nursing homes and homes for the aged, etc., which are private.

Mrs Marland: That is true. Okay, let's leave them out. How about corrections? The provincial government is their employer.

Mr Wildman: The government will privatize them too.

Mrs Marland: What route of appeal do they have? I mean, are you saying that this advisory committee is going to set out the rules?

Mr Millard: They are going to make a recommendation for a set of procedures to the minister, who in turn would have the authority to regulate those for all of those workplaces.

Mrs Marland: Right, and so the appeals of all of those workplaces are just back through their unions. Is that how they would appeal violations?

Mr Millard: They would be appealed according to the procedures that would be put in place and, of course, they would have an appeal mechanism directly to one of our inspectors. If they had a complaint, our inspector would be able to investigate and investigate compliance with the procedure that was set out in the regulation as well.

Mrs Marland: Okay. Are you convinced that this is going to clean up all the examples of violations that we had with nursing staff, correctional staff, ambulance officers? We actually did not have any examples of police officers or firefighters, but we did in those other sectors. Do you think these advisory committees proposing procedures to be used in those workplaces will eliminate the problem that exists?

1510

We had some very bad examples with women correctional officers going alone with mad prisoners. I mean, they had some pretty trashy situations for anybody to work in, and it was more profound, I think, on the members of the committee because they worked for the provincial government. Do you think this is going to eliminate that?

Mr Millard: I think the ability to regulate a procedure for the kinds of workplaces that are specific to the kinds of workplaces where the public is at risk as a result of the activities and the individuals will allow a very effective tool to enforce and to administer by our inspectorate. That is not in place now. There is simply no right or restricted right to refuse for these employees and there are no regulations that say what the procedure in that workplace should be when the employee is confronted with one of these situations where he believes he is likely to be in danger. I think this will be a very effective tool in allowing us to administer it and determine whether or not employers are in compliance with a set of prescribed regulations. So I think it will be an effective tool, yes.

Mrs Marland: So the worker, under this process, will assess whether the work procedures for his workplace give him the right to refuse work if the work procedures are not in compliance.

Mr Millard: No; this section does not provide a right to refuse for those people who are presently exempted from the right to refuse or who have a restricted right to refuse. It does not provide that. It provides for a provincial advisory committee equally composed of management and worker representatives to advise the minister with respect to procedures in those workplaces so that they can, in fact, address the kinds of concerns that would make them believe they are likely to be in danger, but it does not provide the right to refuse.

Mrs Marland: Who will select the workers? How will the workers be selected to sit on these advisory committees? Are they going to be paid per diems for sitting on them? Is it going to be a little plum to be on an advisory committee that reports to the minister?

Mr Millard: I do not think it is ever a plum to be on one of these advisory committees.

Mrs Marland: It is pretty prestigious to be on an advisory committee that reports to the minister.

Mr Millard: It takes a good deal of very hard work, as some of those who sit in the audience will attest, who do presently sit on those kinds of committees that advise the minister. It is a lot of very hard work. We have no across-the-board policy with respect to the payment of per diems or expenses. On a case-by-case basis, we determine ability to pay and we make our determination on that basis. I cannot tell you at this time. We have not built into the legislation whether there would be per diems and expenses paid. I am sure if that were necessary to get the right kind of people, then I think we would be very favourably disposed towards that.

Mrs Marland: Your advisory committee is going to have to travel to look at these workplaces in order to establish procedures, is it not?

Mr Millard: I would hope that we would be able to get the kind of people for the advisory committee, and in fact it would be our undertaking to get the kind of people who are intimately familiar with the kinds of activities that one is expected to carry out in the course of one's work in those workplaces by having people who are either workers or represent workers in those kinds of facilities and managers or people who represent managers from those types of workplaces.

Hon Mr Phillips: Maybe I can put my interpretation on what we hope will come out of

this. Tim, you keep me honest here in terms of the language and what not.

Mr Millard: I think that is what you are doing for me now, and I do thank you for it.

The Chair: I think they are both blanching.

Hon Mr Phillips: I thought you were.

Mrs Marland: They are both blushing.

The Chair: It is a terrifying prospect here.

Hon Mr Phillips: I know from the committee members that among the delegations that caused the most impact at the committee were some who were individuals, organizations that currently do not have the right to refuse and, in their opinion, were put into circumstances that endangered themselves or the people they are trying to serve.

Mrs Marland: Right.

Hon Mr Phillips: What I believe this does is attempt to get at a solution to those issues where I think there is a public expectation that if there is a fire or if there is a police matter or if there is a problem in our correctional institutions, our employees will respond to it. But I also think there is an expectation that we should have mechanisms that get at some of the concerns they would have in a way that resolves them.

What I expect from this amendment is what it says, "the establishment of some advisory committees." I am not sure of the exact format of them. I think, Tim, on the correctional institutions one, there currently is a committee under way that may or may not be the model, but it would have representation from a fairly broad cross-section of the correctional employees—and I think that has to reflect the geography and what not—and from the employer coming forward with recommendations on how we can improve the situations where they are put in the dangerous positions, short of the right to refuse. As I say, we are trying to find the balance here between the public's broad interest in safety and the employees' clear interest in their own safe working conditions.

So the idea here is to find a tool, a process where we have the two sides wrestling with the issues to come up with the procedures that will get at some of these problems that do not seem to have been resolved, but where we still have the assurance for the public that they will find a response where the public safety is at danger.

I cannot say exactly how each of these advisory committees would be structured. In the corrections it may be somewhat easier because there tends to be only, I think, two employers there. Where you get into broader ones, such as police and fire, you have municipalities, you

have provincial employees. It may be possible to have one committee that could look at it. It may be that there are sufficient differences of interest that there may be a couple of committees required.

The end result of it all is—and I understand and the committee heard—the provinces have found mechanisms short of the right to refuse that have been able to help to deal with some of these issues for employees.

Mrs Marland: We certainly heard glaring examples of where the provincial government is a bad employer. We have yards of Hansard where there are examples. The unfortunate thing is that where those are the case, the OPSEU people or the CUPE people have been placed in a position where it went beyond their individual safety; it became a public safety issue.

I am staying away from police and firefighting. I have not referred to either of those because I am not dealing with municipal government here; I am dealing with provincial government here. I see this amendment addressing the establishment of an advisory committee and it would be interesting to know if OPSEU and CUPE will recommend the workers who will sit on those special advisory committees for each type of workplace. Are you going to be open to OPSEU and CUPE saying, "Look, this individual is quite a specialist on ambulance operations" or the corrections or whatever area that falls into this category would be represented?

1520

Hon Mr Phillips: I think in the end the idea is to come up with something that both parties are committed to, and if we want that, I think it would stand to reason it would be the employees' organization that would designate the individuals they would want representing them.

Mrs Marland: Okay. So you would ask the unions, OPSEU or CUPE, to recommend who it is they would like to have sit on the advisory committee?

Hon Mr Phillips: As I say, I think if we want commitment in the end from the employee-employer group, that would stand to reason, yes.

Mr Mackenzie: I would ask the minister, and Mr Millard as well, is a committee really a practical method of addressing the service care workers' lack of the right to refuse? I have difficulty about it. I think you have hit here the one area—there are other areas that may or may not have been an improvement—the one area where we have really sold out our own employees.

I do not know a group of workers who have made better presentations to us and I do not know better examples than we have been given during the course of the hearings where they should have the right. I would much rather look at how you can deal with it at the other end, if it is misused, rather than automatically deny them the right to refuse. I really think it is probably the most barbarous part of the whole act, as far as the government is concerned; the biggest default and the biggest shortcoming in the legislation.

I have real difficulty in knowing how you can really justify saying that we are not able to work out some other arrangement, given some of the rather blatant examples that have come before this committee. It just really concerns me that you have opted-out on this one, and I do not know how in God's name a committee that you set up to deal with an individual class, whether it is jail guards or firemen or somebody else, is going to be able to come up with an answer, or whether that committee is just going to be an exercise so that we can fog over the issue of not dealing with it. I really have some reservations on your approach here. I think you have totally dropped the ball when it comes to the government's own employees.

Hon Mr Phillips: I wish there were an easier answer to it. I repeat what I said earlier: I think if we want both parties to be committed to the procedures we come up with, if we want both parties to participate in them, I think the challenge for myself as the minister will be to make sure that process is not a prolonged process and to make sure that it is not a process in which one side or the other—and I do not prejudge—feels, “Well, we can drag our heels on this.” I do agree, and I certainly must say the members have let their feelings be known, and I think of all the presentations that all of you heard, they were perhaps among the most compelling.

I think a committee actually is probably the right approach. I think it is the way we will get the two parties to buy into the solution. I think the challenge here as the minister will be to ensure that it takes place quickly and that a resolution comes quickly.

Mr Mackenzie: I suggest to you, Minister, that they might buy in once, but the end result of that committee, if there is any equality at all, is going to be that the only answer is to give them the right, maybe look at whether or not there are some ways you deal with what might be perceived as a misuse of that right. I do not think you will get a second round on this, and I think you will come up with the same appeal from the

workers that they have already made to us in such strong terms, and that is that they should have the right the same as anybody else.

Mr Wildman: I just want to make a few comments because I think this is central to the bill and is a very important point. We are dealing here with people whose job it is, in most cases, to protect the public. We believe they are responsible and skilled enough to have people's lives in their hands, in many cases, and yet, for some reason, the government does not believe they are responsible enough to exercise a right to refuse unsafe work in a way that will not endanger these people for whom they have responsibility. To me, that is just a very strange position for the government to take.

The minister indicated that other provinces have come up with mechanisms; I think the term he used was “short of the right to refuse.” I want to remind him that no other jurisdiction in this country exempts public employees or limits the right to refuse in this way. Not one. We heard very moving presentations from representatives of the public sector employees before the committee, and they said that in their opinion they were being put in danger. We had lots of examples. It was not just opinion, it was fact. We had cases where we saw working conditions, work procedures, the use of faulty equipment that in fact killed people, and in some cases did not just kill the employee, it killed the person whom that employee was responsible for, as well.

If I seem a little emotional about this, we had a case of a very young woman from Sault Ste Marie named Krista Sepp who died because of work procedures, if you want to put it bluntly. She was a person who had trained to look after and help troubled people, and one week after graduation and starting a job, on a Saturday night, is asked to work alone in a group home with no backup and apparently is not advised that she is dealing with a potentially dangerous individual. I think obviously she should have been advised of the danger.

I realize there are court cases involved in this and so on, but it is obvious to me that that young woman should have been advised of the danger. As an inexperienced employee, no matter how dedicated she might have been, there is no way that she should have been left alone on a Saturday night in that situation with no backup. There has been evidence brought forward that in that particular case the employer and the police were aware of threats. If anything cries out for the public sector worker to have the right and the

responsibility to refuse an assignment of work that is potentially hazardous, it is the death of Krista Sepp.

We have had other examples brought before the committee. We had an example of an experienced ambulance officer who was in this building a week prior to his death expressing concerns to MPPs about the potential hazards of the contracting out of the ambulance service. As the chairman knows, that individual died a week later near Chappleau. His prediction was correct. He was right. We may find other evidence of what happened there, but there is no question that if that ambulance officer had had the right to refuse in that kind of situation, not only might he be living today but other people might be too.

1530

Keep in mind, as I think the ministry and everyone in this committee is aware, that the right to refuse is not extended as a way of giving people the right to stop work but as a way of forcing the employer to make the work safe. If public employees do not have the ultimate right to refuse unsafe work, it is going to be far more difficult and remain far more difficult for them to ensure that their employer makes the work safe. Setting up a committee to look into it I do not think is going to resolve the problem.

We have had cases brought before this committee of overcrowding in prisons, we have seen work stoppages—work actions I guess is a better term—in the correctional facilities in this province, which have led to a committee. It remains to be seen if that committee is going to be able to resolve those problems.

We have had evidence brought before the committee of nurses being assaulted in both the psychiatric facilities in the province and the nursing homes and nurses who have been asked to lift heavy patients alone and have had back problems as a result. Again, work procedures will not be rectified unless the workers have the right to say, "No, I'm not going to do that until it's made safe." Having a committee where you can discuss it is not going to solve the problem of when a nurse has to lift a patient who is bedridden and needs to be moved so that that person does not experience bed sores or so that he can be cleaned. Discussing it in a committee is not going to resolve the problem of what that nurse faces on a particular day or maybe day in, day out.

In terms of police officers, you could again talk about work procedures. I have heard some police officers argue that they should not have to work alone in cruisers at night. I do not know. But those are issues that have to be dealt with. I

have heard firefighters raise questions about the right to know. We now have in the bill the requirement to post where there are dangerous or hazardous substances so that the fire department will know where they are located, but do firefighters really know what will happen in a case of very intense heat to those chemicals or what the chemicals in conjunction with other chemicals will become and what dangers there are for them in those kinds of situations?

We have had direct evidence before the committee in Thunder Bay about firefighters who work for the provincial government, for the Ministry of Natural Resources where they used to have five-man crews. This provincial government, as a way of saving money, arbitrarily cut those crews to three and cut the total number of firefighters by about 230 across the province.

They have a committee and they are discussing. My understanding is that a result of those discussions has not been any improvement or any increase in the number of individual people on each fire crew. As far as I understand it, the only result has been the suggestion by the provincial government, by the Ministry of Natural Resources that in emergency situations the government might indeed hire more temporary employees to fight fires. I question whether that is going to resolve the safety problem. I really wonder.

An interesting question is, what about other peace officers? If policemen cannot exercise the right to refuse, what about a conservation officer who is also a peace officer and is responsible for enforcing not just the game and fish laws in this province but certain parts of the Criminal Code?

If a CO can exercise a right to refuse under this legislation—I do not know if he can, but I think he can—then why is a police officer treated differently? In both cases they have the possibility of facing dangerous individuals and dangerous situations which often may involve the use of firearms and individuals who may be violent or may be under the influence of alcohol or whatever and may produce serious danger situations.

In the case of firemen and policemen, we are not saying—at least I do not think anybody is saying—that a policeman should be able to say: "Well, no, there is a possibility that someone in this particular case that I have been told to go out in answer to a call for may have a gun. It may be dangerous and therefore I am not going to go." That is not what we are talking about.

But we are talking about the case where the policeman knows that his cruiser was in an

accident earlier in the day and may not be roadworthy and should be able to refuse to use that vehicle to answer the call. The same thing with a fireman: If the fireman knows that the hose is faulty, he should be able to say, "No, we will not use this piece of equipment because it may endanger us or other workers or members of the public." It is the same again for an ambulance attendant. We had evidence of tires being in bad shape, its being reported by the ambulance officer and the ambulance officer being told that it was a life-or-death situation and that he had to go out with the vehicle.

Frankly, that is putting the public as well as the worker in danger. I think we are talking about responsible people who care about the public safety and that is why they are in the jobs they are in. If we expect them to be able to protect the public, they also should have the rights that other people have to protect themselves because the two, in many cases, go together. It is certainly true of the air ambulance officer and it is true of firefighters, nurses and prison guards.

I will just end by saying that it is not acceptable to me that we say to people like the parents of Krista Sepp that after her death people in her situation still do not have the right to say, "No, I will not go into a situation like that without backup." It is just not acceptable.

Mr Mackenzie: I do not intend to go much longer on this, but I want to tell you and I want to use one of the same examples that is even worse than my colleague has said. I hope every member of this committee is listening carefully to what we are doing with this copout, and that is what I feel it is.

What we are doing with this copout, what every member of this committee is doing and what this government is doing, is saying to another Krista Sepp that she does not have the right to refuse, other than maybe quitting her job and she might be into trouble on that, if she takes an assignment that could very well end up getting her both raped and murdered. That is exactly what this committee and what this government is saying with this particular change.

I think we should take a serious look at it. I would like also, if I can—there are a number of other sections and there is the inspection section—to suggest that we step this down and deal with all of the right-to-refuse sections in the course of our hearing tomorrow.

The Chair: You wish to stand this section down and then put it at the beginning of the right-to-refuse sections?

Mr Mackenzie: That is my request to the committee.

The Chair: What is the desire of the committee? Is there any problem with Mr Mackenzie's suggestion?

1540

Mr Dietsch: Of course, we recognize the importance of the section. There is no question about that. The thing I have difficulty with, quite frankly, is that we have spent the last three quarters of an hour in debating this particular section. That is not to understate the fact that it is an important section and the members speaking on it are very committed in their views. I can appreciate that. The difficulty I have is reintroducing the same debate all over again. I do not think that is an acceptable solution at this particular time.

The Chair: Just as a word of caution, we are going to have the debate all over again anyway because we are going to move into a separate section and, in fact, if you are looking for an opportunity to abbreviate the debate—I do not want take a side here, but I think you will end up with a shorter debate on the whole issue if you do them together than if you hold them separately because they will be totally in order if you debate them separately at great length. That is just a friendly word of caution.

Mr Mackenzie: They are part of a package and it is going to be the most controversial or probably the most controversial section. I think you are right. It is not our intention to use another round tomorrow to have a lengthy debate on it, but I think they are part of a package and I think the case has to be made as strongly as we can, which is what we are trying to do. I think we could get a few more sections covered if we went on with something else now. Otherwise, we are just going to be doing the same thing.

The Chair: The other point is that there are still two sections of the bill that we have stood down that we could deal with in the time remaining, if that is the wish of the committee.

Mr Mackenzie: I think they can be dealt with quickly and maybe even a couple of other sections.

Mr Dietsch: In the interest of what my colleagues have said, I would be in agreement to stand it down based on the fact that it is not going to be an unnecessarily long debate when we are dealing with it. I have that assurance, as the gentlemen have said, and we can move on.

The Chair: There is no motion so there is no guarantee of the length of the debate. I would not

want that to be the assumption on the part of the members.

Mr Mackenzie: The only thing I can tell the member is that it is my intention to use about half of the time that I have used and mine has not been very long.

The Chair: There is no restrictions on that. As long as members understand that.

Mr Dietsch: I understand perfectly. I accept the gentlemen at their word. If that is what they have said, that is fine.

The Chair: Do members want to go back to the sections stood down or do you want to proceed?

Mr Mackenzie: Why do we not go back to the inspections? That may not take very long to deal with.

The Chair: We are back to subsection 3(2), which deals with inspections.

Mr Mackenzie: I take no particular pride in authorship but I think originally it was our motion and I notice it came back to us as a government motion. If the government insists on that, so be it, but I really think it should be a New Democratic Party motion.

Mr Dietsch: You are quite welcome to read it, Mr Mackenzie.

The Chair: As a matter of fact, mine says NDP motion.

Mr Mackenzie moves that subsections 7(6) and (6a) of the act, as set out in subsection 3(2) of the bill, be struck out and the following substituted:

“(6) Unless otherwise required by the regulations or by an order by an inspector, a health and safety representative shall inspect the physical condition of the workplace at least once a month.

“(6a) If it is not practical to inspect the workplace at least once a month, the health and safety representative shall inspect the physical condition of the workplace at least once a year, inspecting at least a part of the workplace in each month.

“(6b) The inspection required by subsection (6a) shall be undertaken in accordance with a schedule agreed upon by the constructor or employer and the health and safety representative.”

Mr Mackenzie: It took rather longer than I thought it would over lunch hour.

Mr Dietsch: I just have one question. I assume that these inspectors in the workplaces would be comparable to the deputy inspectors in the conservation authority?

Mr Mackenzie: I do not think that is the intent.

Mr Dietsch: I just wanted to clarify that.

The Chair: Order, please. Mr Mackenzie moved a motion previously. Can we deem that to have been withdrawn?

Mr Mackenzie: Whatever the procedure is.

The Chair: We will deem that to have happened.

Mr Wildman: It sounds like Bill 162 all over again.

The Chair: Any further debate on the amendment Mr Mackenzie has just moved?

Mr Riddell: In subsection 6a, who determines the practicality of whether the workplace should be inspected or not?

The Chair: Mr Millard.

Mr Millard: Far be it from me to speak to an NDP motion, but if the Chair wishes, I shall do my best.

The Chair: Mr Riddell asked a specific question.

Mr Millard: The first test of practicality will fall upon the workplace parties to determine whether they believe it is practical. Failing agreement among those parties, whether or not it is practical would ultimately fall to an inspector in the Ministry of Labour.

The Chair: And the mover of the motion, there is no problem with the explanation.

Mr Mackenzie: I have no problem with that at all.

The Chair: You are not implicated, Mr Millard.

Mr Wildman: I just have one question of clarification. My understanding of the import to the amendment is that the workplace, its physical condition, will be inspected once a month, but at the very minimum it will be inspected under subsection 6a once a year and part of the workplace at least once a month.

However, subsection 6b would allow what we intended in our original amendment in the construction sector, that if the two parties could agree, they could have a more frequent schedule of inspections. Under subsection 8b, if in the construction sector the parties could agree, say, to have a weekly inspection of a workplace, then they could do it. This is what we are trying to get at, at least here. I just wanted to make sure that legal counsel thinks my description is correct. I am not limiting it to the construction sector.

Mr Millard: I think we are agreed that the parties could agree between them to conduct inspections more often than once a month.

Mr Wildman: Okay. What we are attempting to get here is that if they can agree with one another, then they could do it more often than the minimum set out in the section.

Motion agreed to.

Section 3, as amended, agreed to.

The Chair: Are we ready to move to section 4(7)? We are going to try and find Mrs Marland because she is part of the action here, so to speak.

This motion was moved, as I recall, by Mr Mackenzie.

Mr Dietsch: You mean on the committee and the certified worker. It is the same motion.

1550

Mr Wildman: Have we got this on the floor yet?

The Chair: I am sorry. I was preoccupied with trying to find Mrs Marland's motion on this, which also amends subsection 4(7), subsection (8)(8f) of the act, but we will deal with yours first. It has already been moved, yes.

Mr Wildman: Has the second one?

The Chair: I am sorry, no.

Mr Wildman: No, it has not.

The Chair: We are in the same situation we were a few minutes ago.

Mr Wildman: Mr Mackenzie should withdraw his first.

The Chair: Yes, he should, and then we will proceed with the new motion. Mr Mackenzie, if you would do those two things.

Mr Mackenzie: The original motion is considered withdrawn.

The Chair: It is withdrawn, and now we can move the newer one.

Mr Mackenzie moves that subsections 8(8c) and (8d) of the act, as set out in subsection 4(7) of the bill, be struck out and the following substituted:

"(8c) Unless otherwise required by the regulations or by an order by an inspector, a member designated under subsection (8) shall inspect the physical condition of the workplace at least once a month.

"(8d) If it is not practical to inspect the workplace at least once a month, the member designated under subsection (8) shall inspect the physical condition of the workplace at least once a year, inspecting at least a part of the workplace in each month.

"(8da) The inspection required by subsection (8d) shall be undertaken in accordance with a schedule established by the committee."

Mr Mackenzie: I take it we are doing this, for some reason or other, because of the other.

Mr Wildman: This is essentially to bring it in line with the one we just passed so that they are similar.

The Chair: We are going to vote on this one and then we will deal with Mrs Marland's motion. All those in favour? Opposed?

Motion agreed to.

The Chair: Mrs Marland, we are dealing with your motion which I do not believe was moved yet.

Mrs Marland moves that subsection 8(8f) of the act, as set out in section 4(7) of the bill, be struck out and the following substituted:

"(8f) The member shall inform the committee of situations that may be a source of danger or hazard to workers and the committee shall consider such information at the first available opportunity."

Mrs Marland: I think it is self-explanatory. Have we passed the section in the bill that deals with occupational hygiene, that would deal with addressing secret formulas and product protection? Have we passed that part? You know what I am talking about, the concern that was expressed about protection of trade secrets.

The Chair: Posting the location?

Mrs Marland: The floor plan was one thing, but posting what actually went into their products. I remember 3M gave us a very good example. I am just wondering, is that in this section?

The Chair: No, that is in section 12 of the bill on page 13, I believe, the designated substances.

Mrs Marland: That is right.

Mr Wildman: Frankly, I think Mrs Marland's wording is an improvement, but I am not satisfied with it either. Subsection 8f, as it is set out in the bill, says that the information will be shared "within a reasonable period of time," and the problem with that is, who determines what is reasonable?

What the workers might consider reasonable might not be what the employer considers reasonable, and then you may end up with a situation with the inspector having to come in and figure out what is reasonable. What one inspector might consider reasonable might not be what another one might, so I think it is too vague. Mrs Marland's wording says "at the first available

opportunity." That is an improvement, but again, how do you determine what is the first available opportunity? Frankly, I would be tempted to move an amendment to the amendment.

The Chair: Just tempted so far, though.

Mr Wildman: Just so far, but I would like to hear what other people have to say.

Mr Carrothers: I am not sure that I do think this strengthens it. This concept of "reasonable period of time," that phrase, that type of thinking is well used in our legislation and is something that those interpreting these laws are well used to dealing with. The concept of reasonability, I think, also brings in things that might have to do with the very specific nature of whatever problem is being dealt with. If we go to words that talk about "first available opportunity," I am not sure we are not hamstringing ourselves, because you would have to then deal with it, as I read that, as the first time it might come up at some opportunity that the committee talks about it.

I think the wording we have would be easier for those used to dealing with this legislation to interpret, easier for the parties to understand because they are used to dealing with it in other contexts, and I think in fact there is more to the point of what we are trying to achieve in the first place.

Mr Mackenzie: I would like to hear from our legal counsel, if we can get a good, independent interpretation on this. My first reaction is that "the first available opportunity"—the committee or a committee member can certainly make an available opportunity—is better language, because we are dealing here with a report that may affect the health of workers, than "within a reasonable period of time." But I do not claim to be any expert on it. It seems to me we have had as much trouble with "within a reasonable period of time" in labour legislation as we have with many other words that some might call weasel words.

I would just like it if somebody here can give us an interpretation of what does allow you the avenue of taking the first possible opportunity to deal with a report back.

The Chair: We have two of the finest legal minds in the province here in the room. I will let the four lawyers fight that out.

Mrs Marland: Would you clarify that? Not on the committee.

The Chair: There are four lawyers in the room, as far as I know, and we will let them sort that out. Whom do you wish to hear from, the counsel or the ministry counsel?

Mr Mackenzie: I would like to hear from both, to see what I can.

Ms Hopkins: I need to be sure that I know what the suggested wording is.

Mr Mackenzie: As in the Tory amendment at the moment, "at the first available opportunity," as against "within a reasonable period of time."

The Chair: Compared with what is in the bill now.

Mr Mackenzie: Unless you can prove to me it is not there, I cannot in this case understand how anybody could argue against that.

Ms Hopkins: I think it is likely that a court will be able to take into account a greater number of factors in deciding what is a reasonable period of time than the court can take into account in making a decision about when the first available opportunity arises.

Mr Mackenzie: Are we talking about a reasonable number of factors or are we talking about getting action, on getting a report back to the workers? That is what I am concerned with.

Ms Hopkins: I think that the quicker wording, the wording that will require the committee to respond more quickly, is likely to be the wording that refers to the "first available opportunity."

The Chair: Which would be Mrs Marland's amendment.

Ms Hopkins: My colleague from the Ministry of Labour has more experience in the way in which the courts understand this language and so she may be able to give us an insight that I cannot.

Mr Mackenzie: It would be fascinating to compare it with what I get from my labour lawyer friends, but go ahead.

1600

Ms Beall: I would agree with what Laura Hopkins has said, that what the court may consider within "the first available opportunity" may not be as broad a number of factors as it would consider to be "within a reasonable period of time." Other than that, I really do not have anything to add beyond what she has already advised you.

The Chair: The minister is going to add to the debate.

Hon Mr Phillips: I am not a lawyer.

Mr Wildman: Good.

Hon Mr Phillips: The challenge we have here is with the words "may be a source of danger or hazard to workers and the committee shall consider such information at the first available

opportunity." I suspect that there are circumstances where they may be a hazard but it may not be of sufficient urgency that the committee would want to meet right away on it. I think that as I read this "at the first available opportunity," if I were interpreting it literally if somebody said to me, "Well, there's a situation over there that may represent a long-term hazard to us," whatever it may be, but it may not be an immediate hazard but a long-term hazard, the committee then is compelled to meet at the first available opportunity, which is immediately.

I am wondering if we are not hamstringing our joint health and safety committees to have to meet immediately on every potential source of danger or hazard. Obviously, at the same time, if it is a significant danger and hazard, you would want them to take action. But how do we get the language that does not mean that each time someone points out a possible hazard, the committee then must meet at the first available opportunity? I think that is probably why the terminology was selected, "within a reasonable period of time," "reasonable" giving the discretion of the committee to determine whether this is the kind of hazard that should be dealt with immediately or whether it is the sort of thing that can wait for a more normal schedule of meetings.

Mrs Marland: I cannot believe what I am hearing. If you look at the wording in the minister's own bill, it says everything that my amendment does. It says, "The member shall inform the committee of situations that may be a source of danger or hazard to workers." For goodness sake, how much semantics do we have to go into? If something is a source of danger or hazard to workers, it is a source of danger or hazard to workers. Surely we are not going to get so picayune that we are going to be deciding whether it is a long-term hazard or short-term hazard. I think if we had a dictionary here and we looked up "danger" and "hazard," we would all be—

Mr Carrothers: You are missing the point.

Mrs Marland: Am I making a point that bothers you, Liberal member?

Mr Carrothers: You are talking about the final few words of a sentence, not the other ones, which we all agree with. So we do not disagree with you.

Mr Dietsch: You are talking about "reasonable period of time" versus "first available opportunity."

Mrs Marland: I know, but I am using the minister's words. He said, "Well, maybe it is a

long-term hazard or a short-term hazard." I mean, give me a break. A hazard is a hazard. If there is a hazard or a danger to workers, it is a hazard and it is a danger. It is a bit like the insurance, I suppose, whether it is serious or permanent.

The interpretation of the English language, I recognize, is a challenge to all of us, but I would suggest that all we were trying to do was make sure that that information was dealt with at the first available opportunity because it is a danger or hazard to workers, and the employers do not want something that is a danger or a hazard to workers.

If it qualifies under most of our understanding of the English language, I would suggest that something that is a danger or a hazard is not something that you would want to exist longer than necessary, so "the first available opportunity" is very, very practical and "within a reasonable period of time" is a little too loose, I would suggest, and it is a little contradictory to the wording of the minister's own bill.

If something is a source of danger or a hazard, that is what it is. Do you want something that is a source of danger or hazard to continue? I would suggest that you do not, and neither would the employer. All we are saying is that the committee should be informed of that so that it can consider that information at the first available opportunity. It is not saying "instantaneous."

The Chair: Does the committee want to complete debate on this bill? I sense an amendment in the wind after this one is dealt with, and there are a number of speakers left on this particular amendment of Mrs Marland's. Does the committee wish to adjourn now and come back at it in the morning, or do you want to complete it now?

Mr Wildman: I would rather we complete it now.

Mr Dietsch: Yes. I would rather complete it now. Then we are done and we are caught up to date.

The Chair: All right. Would you keep that in consideration when you are speaking to it.

Mr Callahan: I wonder if I could suggest that you use the words "at the first available opportunity or within a reasonable period of time, depending upon the circumstances." In fact what that does is, that takes the immediate hazard that Mrs Marland talks about and then it takes the one that is not an immediate hazard, which could be "within a reasonable time."

If you are trying to address both—and in the bill, you say “shall inform the committee of situations that may be a source of danger or hazard.” I think there are two different terminologies there; one is a danger and one is a hazard. A danger is something that might be potentially going to happen down the line; a hazard is something that is an immediate danger. So use both terminologies so it reads “shall consider such information at the first available opportunity or within a reasonable period of time, depending on the circumstances.”

Mr Wildman: Mr Chair, my colleague would like to make a comment, and then I would like to move an amendment.

Mr Mackenzie: My only comment is, the defence so far from the legal end of the debate has been that you would get a broader interpretation. I think I heard you might get faster action the one way, but you would be safer with a broader interpretation. The response to that is that the broader interpretation also can mean one hell of a lot more stalling and delay. It is another reason why I like the words that come from the Tories on this.

Mr Wildman: Mr Chairman, I would like to move an amendment to the amendment.

The Chair: Mr Wildman moves that the words “at the first available opportunity” be struck and that the words “at or before the next monthly meeting of the joint health and safety” be substituted.

Mr Wildman: We have had discussion here about how we deal with immediate danger as opposed to what might be a longer-term problem. I submit to you that the immediate danger could be dealt with by the certified worker exercising the right to shut down. If there is an immediate danger and it is identified by the certified member, then that person can exercise the right to shut down and that would then initiate the whole process of dealing with rectifying the problem.

However, if it were a longer-term problem, if you leave in the wording “at the first available opportunity,” or as is drafted in the bill, “within a reasonable period of time,” it could drag on and on and never be resolved. That is what we are attempting to get, this second situation in this amendment. We are trying to deal with something which is not an immediate hazard that might result in a work refusal or a shutdown but rather something that is perhaps an ongoing problem, and by substituting the wording that I have proposed, “at or before the next monthly

meeting of the joint health and safety committee,” that would require the matter to be dealt with within a specific period of time rather than guessing about what the words “first available opportunity” mean or what is a reasonable period of time.

Mr Mackenzie: I do not want to take issue with my colleague, but my one concern with it is, do we have a requirement for monthly meetings in the bill? I am not sure that we do. If we do not, then that makes that amendment not very valuable.

The Chair: All those in favour of Mr Wildman's amendment, please indicate. Opposed?

Motion negatived.

The Chair: Let us deal with Mrs Marland's amendment.

Mrs Marland: Mr Chairman, I would like to define “danger” for the sake of the committee, because I am sure that the courts understand the English language. Danger is “exposure or liability to injury, pain or loss” and, of course, “a case or cause of danger,” so I do not think there is any doubt about what “danger” means.

Mr Carrothers: We appreciate that clarification, Margaret.

Mrs Marland: I am just telling you that whoever used the words used them for a purpose, and I think that is what has been missed here. And “hazard” is—oh, dear.

Mr Callahan: Can you read it to us?

Mrs Marland: I do not think I should read it.

Mr Carrothers: What edition of Webster's is that?

Mr Dietsch: Skip the dirty words and go on to the next ones.

Mrs Marland: You would not believe what this says.

Mr Callahan: Now we are just sitting on the edge of our chairs.

Mr Dietsch: Are you sure we want all that on the record?

Mrs Marland: I am not going to read it. I am going to read it after we are off Hansard. I will read it to you later, but one example of hazard is “a source of danger; chance; a chance event; accident; venture; risk.” This is Webster's, but I will keep it open and read you the other part later.

In any case, I do not think there is any doubt about what those words mean, and they are obviously there for a purpose. I think that a

hazard or a danger to workers should be dealt with at the first available opportunity.

The Chair: All those in favour of Mrs Marland's amendment, please indicate. All those opposed?

Motion negatived.

Section 4, as amended, agreed to.

The Chair: That completes the sections up to section 8 of the bill.

Clerk of the Committee: No.

Mr Dietsch: Seven.

The Chair: Oh, we stood down 7a, so tomorrow we will start there.

The committee adjourned at 1615.

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Vice-Chair: Mackenzie, Bob (Hamilton East NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Fleet, David (High Park-Swansea L)

Harris, Michael D. (Nipissing PC)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miller, Gordon I. (Norfolk L)

Riddell, Jack (Huron L)

Wildman, Bud (Algoma NDP)

Substitutions:

Bossy, Maurice L. (Chatham-Kent L) for Mr Miller

Callahan, Robert V. (Brampton South L) for Mr Fleet

Carrothers, Douglas A. (Oakville South L) for Mr McGuigan

Pelissero, Harry E. (Lincoln L) for Mr McGuigan

Clerk: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

Witnesses:

From the Ministry of Labour:

Millard, T. J., Assistant Deputy Minister, Occupational Health and Safety Division

Phillips, Hon Gerry, Minister of Labour (Scarborough-Agincourt L)

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Government
Publications

No. R-22 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on Resources Development

Occupational Health and Safety Statute Law Amendment Act, 1989

Second Session, 34th Parliament
Tuesday 27 February 1990



Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

Published by the Legislative Assembly of Ontario
Editor of Debates: Peter Brannan

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday 27 February 1990

The committee met at 1011 in committee room 2.

OCCUPATIONAL HEALTH AND SAFETY STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

The Chair: The standing committee on resources development will come to order as we consider our perusal of Bill 208, An Act to amend the Occupational Health and Safety Act and the Workers' Compensation Act.

I have a couple of announcements before we begin. Members have been distributed some written presentations, a couple of packages, for your information. Second, I know you would want to know that 37 years ago today, Mr Bossy's wife gave birth to twin sons, if anyone wants to know that. Finally, members should be reminded of what the reference from the Legislature was to this committee.

Mr Wildman: Did you say reverence?

The Chair: Reference; no reverence. It was that this committee will report Bill 208 on 26 March whether or not we have concluded the clause-by-clause examination. So whatever we do today completes our examination of Bill 208 until it is then referred to the House in whatever stage it is at that point. That was a motion in the House so we cannot alter that. By this afternoon, a motion will be moved from the committee to report the bill back on 26 March, just so everyone knows the ground rules by which we are playing. It does not matter what section we are on in the bill. When we adjourn this afternoon at four o'clock, that is what will be reported to the House.

Mr Wildman: Can I ask a question? Just in terms of the procedures, if for the sake of argument we were not completed or if we had not gone through every section of the bill and all of the amendments, and we report that to the House, then when the House comes back and we would then go to committee of the whole on the bill, I would suspect—

The Chair: In the House.

Mr Wildman: In the House.

The Chair: Correct.

Mr Wildman: Then is the whole thing opened up again or are we starting in committee of the whole from the point we reached in the committee here that was referred to the House?

The Chair: I believe the House leaders will determine that, but I also am pretty sure that they would take the bill from where we had left off. I cannot imagine them starting over again. I guess they could if they so determined, but I would be very surprised.

Clerk of the Committee: That depends on what the House leaders determine.

The Chair: I think it is almost certain that they would start in committee of the whole in the Legislature where we left off. That would almost be—

Clerk of the Committee: Because we would be reporting the bill as amended to date.

The Chair: Yes.

Mr Dietsch: That is good news.

The Chair: I would think it is.

Mr Wiseman: Have there been some times, though, that they have gone back to square one?

Clerk of the Committee: When there have been other amendments they would reopen the section.

The Chair: The clerk mentions that it has been determined that sections could be reopened even though they have been dealt with in committee. I cannot remember the bill, but I can recall a government not liking what the committee had done and reopening a section—

Mr Dietsch: No, no.

The Chair: It might even have been Bill 7.

All right. Let us proceed. When we adjourned, we had agreed to stand down section 7a because it dealt with an issue that we would also be dealing with later under section 19 of the bill, so that we would keep open section 7a until we reached section 19 of the bill, which is the right to refuse or stop-work aspect of the bill. That means that we will begin with section 8 of the bill, which is changing a heading of the Occupational Health and Safety Act.

Section 8:

The Chair: This is on page 12 of the bill. Is there any debate on section 8?

Mr Wildman: This is one of the few occasions when somebody being deemed to be something is desirable. Is that it?

Mr Dietsch: So you are supporting the amendment?

Mr Wildman: On page 7 of the bill, the member of a committee shall be deemed to be at work.

The Chair: We are dealing with page 12 of the bill, section 8, which simply changes the—

Mr Wildman: I am sorry; I am on the wrong page.

The Chair: —heading for part III of the act. That is where we are at right now. I think the committee is ready for the question. Shall section 8 carry?

Section 8 agreed to.

Section 9:

The Chair: Mr Dietsch moves that clauses 14(2)(j) and (k) of the act, as set out in section 9 of the bill, be struck out and the following substituted:

“(j) post at a conspicuous location in the workplace a copy of the occupational health and safety policy;

“(k) provide to the committee or to a health and safety representative the results of a report respecting occupational health and safety that is in the employer’s possession and, if that report is in writing, a copy of the portions of the report that concern occupational health and safety; and

“(l) advise workers of the results of a report referred to in clause (k) and, if the report is in writing, make available to them on request copies of the portions of the report that concern occupational health and safety.”

Mr Dietsch: It is fairly self-explanatory. Clause 14(2)(j) is basically referring to the posting of the policy in terms of it being posted in a conspicuous location for all the workers to have an opportunity to view, and clause 14(2)(k) really makes reference to the written report and what parts in the report are referencing the health and safety issues.

Mr Wildman: I would like a little explanation here further because if I look at the original drafting of the bill and this amendment, you are putting in the phrase “if it is in writing,” whereas before it said that the employer would have to provide to the committee or the health and safety representative “the results of any report respect-

ing occupational health and safety that is in the employer’s possession,” and then, if it is in writing, a copy of the report.

What is the purpose of this change here? What is the significance of what you are proposing here?

1020

Mr Dietsch: It is basically not a change, Mr Wildman; it is making reference to those parts of the report that are referencing health and safety. This being a health and safety bill, it is possible that some reports that are in the possession of employers could be dealing with some other segment of their business, whether it be a fiscal report or others that we want to clearly define within the bill, the relevancy for occupational health and safety.

Mr Wildman: That is what I am concerned about. When Mr Dietsch says that there is no change, I think there is a change. It appears to me—maybe I am reading too much into this—that this is an attempt by the government to respond to the concerns raised by some employers about trade secrets. Is that right or wrong?

Hon Mr Phillips: I think it is more, and I will ask Mr Millard to comment on it, in response to people saying: “There may be quite extensive reports that we have prepared for business plans that would have our entire business plans. Any part of that report may deal with health and safety matters.” I think the concern was, “Do we need to release our entire business plans publicly or is the intent to provide the relevant information on health and safety matters?” This amendment is designed to ensure that the relevant information on health and safety matters are provided without the requirement of an entire business plan, for example, being made public.

Mr Wildman: Okay, but it is the responsibility and the right of the employer to determine what deals with occupational health and safety in that case then, is it not?

Hon Mr Phillips: “...a copy of the portions of the report that concern occupational health and safety.”

Mr Mackenzie: Can I have a supplementary on that? One of the things that bothers me a bit in clause 14(2)(k) also is the results of the report. Who summarizes or assesses that? In some cases that would bother me; in other words, deciding what results of the report you are presenting to us.

Mr Dietsch: I would presume the individuals who write up the report, obviously go through their—

Mr Mackenzie: It might be a management committee.

Mr Dietsch: If it is an internal report, it could very much be a management committee, for which there would be input, I would expect, from the joint health and safety committees that are operating within the plant. If it is an external report, than whoever the individual who has been hired to do the report—

Mr Mackenzie: We have no guarantee that it might not be an individual action of the company, or that it might be an outside report and if they are going to summarize the results of the report, it does leave questions in my mind.

Mr Dietsch: I would submit that any kind of a report that would be done either under the current wording or the changed wording would be exactly the same. With the sharing of responsibility in the workplace, I think you have to have a certain amount of trust and faith within the system. In relationship to the joint health and safety committees, the partnership that is built over a period of time, I expect in many workplaces will settle itself through.

Mr Mackenzie: I am wondering if the ministry could respond to the concern we have raised on this?

Mr Millard: Inasmuch as clause (k) is furthered by saying "and, if the report is in writing," the first reference, "provide to the committee or to a health and safety representative the results of a report," would mean that report was not in writing and therefore the results of that kind of report would be reported to the health and safety committee or the representative.

If the report is in writing, the accommodation we have made in this is to say that this portion of the report that concerns occupational health and safety, a copy of that, must be made available to the committee. There is no opportunity for summarizing if the report is a written one; there must be a copy of that portion of the report. If it deals with occupational health and safety, there is an obligation upon the employer to make that available in writing and a copy of that available to the committee. The first part of that clause, Mr Mackenzie, deals with nonwritten reports and the second part of that clause deals with written reports.

Mr Mackenzie: I guess the question still applies to the nonwritten report. You are taking that on face value.

Mr Millard: Inasmuch as it is a nonwritten, the results of that are what will be important and we are asking that even where it is nonwritten,

the results be reported to the representative or the committee. Where it is in writing, of course, then that discretion of reporting the results is not there, but a copy of that portion of the report has to be made available.

Mr Mackenzie: The same things applies. Whatever they are going to report, if it is a nonwritten report, is going to be a summary of what whoever is making the report sees as the problem or lack thereof.

Mr Millard: The legal obligation is that it be the results that are reported.

Mr Wiseman: I feel that if we are going to build a trust between the employer and the employee, then we should not be kind of thinking that there is a breakdown before there really is. I am sure if there is a breakdown, they would bring in the Ministry of Labour people and they would not trust that employer again. But I think if they are going to try to get a piece of legislation that is going to work, both start off from the same point that they trust one another until that breaks down.

Mr Mackenzie: This bill is a result of a breakdown already.

Mr Wiseman: I do not think so. If they have to give everything in the report that relates to occupational health or safety, I think that is good. As a small businessman, I cannot see putting the results of a study up there and further, having going to approach business down the road, in a report for everybody to read and perhaps take home and show to my opposition. I do not think that is part of what we want.

We want to make the occupational health and safety part of it known so they can make a judgement on it. For the people who are putting that out, I am sure that a company is going to probably have some professional, in most cases, make it up. Their reputation is on the line, not only with the company but with the union or whatever if they do not put out an honest report. I do not have any problem with that. Having been in a small business, like I say, I have maybe a feel for that section.

Mr Wildman: With respect, if this were all going to be based on trust and there was not a breakdown in occupational health and safety in this province, then why did we have almost 300 people die last year in the workplace?

Mr Mackenzie: I would like a further response to clause (j), "post at a conspicuous location in the workplace a copy of the occupational health and safety policy." Is that restrictive? You can have an awful lot of workplaces where one copy is not going to cover very much

of a plant. I am just wondering what the ministry's interpretation of that is and whether that could not be a little tighter.

Mr Millard: It is the same wording that we use with respect to the posting of orders in the workplace. To my knowledge, there have not been a large number of circumstances, not circumstances that have come to my attention, where the posting has created the problem. Sometimes the failure to post, and thus noncompliance with that part of the act, has created problems but in terms of the obligation to post and then whether it is reasonably available to employees, in my experience at least it has not caused a major problem.

Mr Wiseman: Could I just ask the ministry, in the old bill—I should know but I do not—was there any provision for posting information like this or is this something that we are doing to make sure the employees have a copy of it?

Mr Millard: There was no obligation with respect to a health and safety policy under the old act. Let me refer to it as the existing act, as opposed to the old act. Under the existing act, there are posting obligations with respect to orders that our inspectors write, for instance—

Mr Wiseman: But nothing for this section.

Mr Millard: —for health and safety policy.

Mr Wiseman: So this is new, tightening it up.

Mr Dietsch: This is an improvement.

The Chair: Are you ready for the question? All those in favour of Mr Dietsch's motion, please indicate. Opposed?

Motion agreed to.

1030

The Chair: Mr Dietsch moves that section 9 of the bill be amended by adding the following subsection:

"(2) Section 14 of the said act, as amended by the Statutes of Ontario, 1987, chapter 29, section 2, is further amended by adding thereto the following subsection:

"(4) Clause (2)(i) does not apply with respect to a workplace at which five or fewer employees are regularly employed."

Mr Dietsch: This is really to take into consideration those operations where there are less than five employees and it is generally a mom-and-pop operation or a family operation. There is an opportunity where such a policy already exists within the close working relationship of that number of people.

Mr Wildman: I am concerned that this may in fact mean that in a workplace with less than five

employees, they do not have to have a policy on workplace health and safety. Is that right?

Mr Millard: It is right that they will not be required to have the written health and safety policy as provided in the section.

Mr Wildman: If that is the case, if it does not have to be written, then it sounds to me like they do not have to have one. If that is the case, how can you justify saying that if you happen to be an employee of a workplace that has five or fewer employees that you have to work in a place that is not required to have a safety policy? Is that not discriminatory against that employee?

Mr Millard: All of the remaining obligations upon the employer are still there. The act still applies in its entirety to those employers and to those workplaces. If those workplaces have in use, for instance, a designated substance, the designated substance regulations apply. All of the provisions of the act apply. This provision with respect to preparing and reviewing annually and posting a written policy would not apply.

Mr Mackenzie: The health and safety act itself has to be posted?

Mr Millard: The health and safety act does have to be posted.

Mr Mackenzie: What would be the difficulty with a policy being required, even if it is a five-man operation?

Hon Mr Phillips: Maybe I could respond to that. As Tim said, the act applies to these organizations. As we were looking at the act, clearly we wanted an act that was workable and practical. I think as we listened to delegations, there are many organizations of five or fewer, when you get into a one- or two-person operation, where, as we put various obligations on to employers, it is difficult for them to spend the necessary time preparing written health and safety program when they are so close to their own workplace and dealing with it on a day-to-day basis.

I think we were trying to ensure that we were responsive to the needs of health and safety and still recognized the way that a small, one- or two-person operation actually operates. The feeling I think was that the development of too many procedures that would be seen as not consistent with that small operation runs the risk of people, rather than obeying the act, saying, "It is difficult for us to fulfil all of those obligations."

I guess we were trying to balance the needs of ensuring that everyone complied fully with the act and recognizing that in very small operations

these things are sometimes difficult to develop, this whole written policy.

Mr Mackenzie: Does the ministry have any figures or do we have any tracking of the kind and number of accidents we have in smaller operations? Are there any figures that can be provided in that respect?

Mr Millard: Yes, we do have that kind of tracking of accident statistics in some sectors, not across all sectors, let me say, but in the industrial sector we do, across large and small business. Based on the reports made available to us by the Workers' Compensation Board, there is not a discernible difference in injury statistics and illness statistics in small business as compared to moderate and large-size business.

Mr Mackenzie: So they suffer, percentage-wise, the same kind of accident rate.

Mr Millard: And they enjoy a similar level of safety as well, yes.

Mr Wiseman: I guess there is one section I can speak to, owning small businesses and knowing that there are family and friends of the family involved in them. We have, touch wood, never had an accident, and I hope we do not. Probably when you start talking about it, you do. But certainly—and I think I speak for all the people who have family-operated or friends-of-family-operated businesses—there is no way in the world we are ever going to have a condition around there that would harm or hurt any one of them, because most of them have been with us for a long number of years and they are just like the family if they are outside of it. I can think of lots of other families in small towns like I have been privileged to live in who fall into that same category, and many here in the city who are restaurant owners or whatever; they are all family or relatives of the family or whatever.

What I am hearing all the time from small businesses, the small ones out there, is that they do not have secretaries and a lot of clerical help to help them; they have to do it themselves. The more you can keep them in their business of trying to make a dollar these days rather than filling out reports and one thing and another, it is better for them and may stop them from going on our welfare rolls or something like this.

Talking from experience, and that is 35 years or more, I feel there is no way that we are ever going to put any of them that I am connected with and ones that I know of in that sort of position, so I am pleased that you are eliminating those from a lot more red tape.

Mr Wildman: I suppose in response to Mr Millard's comment earlier, it is a question of whether the bottle is half full or half empty. It depends on how you look at.

But I have a specific question. Is it correct that under the Workwell program of the Workers' Compensation Board, companies can get rebates on their assessment if they have health and safety policies and programs in place? And if that is correct, is not part of that program the requirement that they inform their workers of the policy and the program? And if that is correct, I am wondering if the WCB makes any provision that exempts business of any particular size from that requirement under that program.

Mr Millard: Mr Chairman, I am afraid I am not sufficiently familiar with all of the criteria that are used on the Workwell program to answer that question. I can get the information for Mr Wildman, but I anticipate that certainly there is a part of one of the Workwell criteria that deals with whether the employer does communicate health and safety practices adequately.

Mr Wildman: The reason I raised the question is that if the WCB does not make any differentiation with regard to the size of the workforce, then I really do not see why we would be here in this Legislature. If, however, the WCB has a provision that says that if you are a small business with less than four or five employees, you do not have to inform your employees, then this would fit with it, but I would doubt very much if the WCB has such a provision in its Workwell program. I would appreciate getting the information.

1040

Mr Mackenzie: I am not sure at this stage that anecdotal deals are useful, but I can remember, either the second or third year after I was elected, not a major, but a striking situation of a small fish and chips shop. They also had a cutting machine that they used to cut up their own halibut, and a 19-year-old girl sliced off one of her thumbs. One of the problems was that—we were told after, and I am not sure if it is totally valid—if they had known enough or had enough training or a safety program in place, they could have saved the thumb, which apparently they did not, and taken it down to the hospital, and there was an excellent chance it could have been reattached. That is just, I guess, an example of a small operation where it might have been useful to have had a safety policy in place, with somebody understanding what they should have been doing in an emergency like that.

Mr Dietsch: I think the important thing is to note that, as Mr Millard said, the act is applicable to these individuals in that workplace. In recognizing the close communication that there is with a small number—and I think that we have to recognize that there generally is in small business settings a very close communication between employer and employee. I think that there is generally daily contact and generally more than daily communication with the individuals and, with all the other points that have been raised, that is the intent of what we are trying to do.

The Chair: Is there any further debate on Mr Dietsch's motion? Are you ready for the question?

Mr Mackenzie: I would like a recorded vote.

The committee divided on Mr Dietsch's amendment, which was agreed to on the following vote.

Ayes

Bossy, Carrothers, Dietsch, Lipsett, Riddell, Wiseman.

Nays

Mackenzie, Wildman.

Ayes 6; nays 2.

Section 9, as amended, agreed to.

Section 10:

The Chair: On section 10, we have a government amendment and then we have a Progressive Conservative motion that would amend the government motion, so let's get the government motion out first.

Mr Dietsch moves that subsection 10(1) of the bill be struck out and the following substituted:

"10(1) Subsection 15(1) of the said act is amended by adding thereto the following clauses:

"(ga) establish a medical surveillance program for the benefit of workers as prescribed;

"(gb) provide for safety-related medical examinations and tests for workers as prescribed."

Do you wish to speak to that, or shall we move right to the Conservative motion?

Mr Dietsch: For the sake of time, I think it would be advantageous to move right to the Conservative motion.

The Chair: Mrs Marland moves that clause 15(1)(ga) of the act, as set out in the government motion, be struck out and the following substituted:

"(ga) establish a medical surveillance program, subject to employee consent, for the benefit of workers as prescribed."

We will deal with Mrs Marland's motion first.

Mr Riddell: An explanation, Margaret.

Mrs Marland: Obviously, our amendment adds "subject to employee consent," so I think that is pretty self-explanatory, is it not? Nowadays, especially with confidentiality of medical records, if you are going to have a surveillance program, it should be subject to employee consent. Since this government is saying that this bill is in the interests of the bipartite workplace, I am sure that it is quite interested in supporting this motion.

Mr Wildman: I would suggest that this is a friendly amendment and I would expect that the government could accept this amendment. The thrust of the government amendment essentially means that these medical surveillance programs will be voluntary. Obviously we are concerned, all of us on the committee, with preserving confidentiality, so I am just wondering whether or not the government can accept the amendment by my colleague.

The Chair: You may get an indication very soon. Any other debate on Ms Marland's motion?

Hon Mr Phillips: I think the intent is that it be subject to employee consent, because as Mr Wildman pointed out, we are amending the act, I think, to essentially do that. I just want to make sure that we do not catch ourselves in contradictory language to accomplish the same thing. Maybe either Tim or a legal counsel can give me some help here.

Mr Millard: While we are clearly sympathetic to the intent, by saying "establish a medical surveillance program, subject to employee consent, for the benefit of workers as prescribed," we certainly want the employer's involvement in the medical surveillance program to be by consent. Whether we wish for the program to be provided as per the employee consent, our intent is to prescribe those medical surveillance programs which an employer shall make available and then allow the worker to participate in those medical surveillance programs. If this accomplishes that same thing, then I rest easier if my learned friend on my left and a legal counsel says that there may be some problem in that regard. We are certainly sympathetic to the intent; just concerned whether the wording will accomplish exactly what we have intended it to accomplish.

Mr Dietsch: Can we get legal counsel?

The Chair: Thank you. Can we go around? Is there anything to add to that?

Ms Beall: If you would like me to, in Bill 208, as it exists now, section 11 repeals clause 17(1)(e) of the act, which is the clause that requires an employee to participate in a medical surveillance program. As a result of the removal of that section, there would now be, in the act, no mandatory participation by a worker in a medical surveillance program, and the proposed amendment to subsection 10(1), which is not yet before you but is a government motion, would not put back in that mandatory participation by workers in the present government motion.

My only thought is, you have "subject to employee consent" after the words "establish a medical surveillance program," and legally I would say that may suggest that the medical surveillance program would be subject to the consent, not that the participation in that program would be subject to the employee's consent. Speaking legally, I would have concerns of some uncertainty as to how that wording may be interpreted.

Mrs Marland: Just for information, not to speak—

The Chair: This I have got to hear.

Mr Carrothers: I wonder how you do it. Can you do that without talking, Margaret?

Mrs Marland: If we are all going to discuss the medical surveillance program and this part is being repealed—as we have just been told, this section 17(1)(e) of the act, and this defines what the medical surveillance program is—I think we need to have a clarification as to what it will now be, since the description has now been repealed.

The Chair: Mr Millard.

Mr Millard: Thank you, Mr Chair, I think. There is no description of the medical surveillance program in the act as it stands. It will be under the regulation as prescribed. We do have at the present time a number, 13, I believe, of designated substances for which we have individual regulations prescribing among other things the medical surveillance program that may be appropriate for that designated substance, and this is one of those regulations, so the prescription for the medical surveillance program will be laid out in a regulation.

1050

As you may be aware, I am fortunate enough to be the neutral chair of a group of labour and management which is the joint steering committee that is developing an entirely new regulatory framework for dealing with hazardous substances in the workplace. One of the things we are addressing ourselves to is the substances

where medical surveillance is appropriate and what kind of medical surveillance program is appropriate. I confidently say when and once, as opposed to if, we develop those, then we will be able to regulate those as new medical surveillance programs. So that is the process and there is no description of the medical surveillance program in the act itself.

Mr Mackenzie: I am not sure if now is the time; I wanted a little further explanation as to just where we are going and the extent of providing for safety-related medical examinations and tests for workers to prescribe. I would like a little comment on that before we vote on this section.

Mr Millard: That subsection, accompanied with section 32, paragraph 32, that allows regulations prescribing, for the purposes of this clause, medical examinations and tests that a worker is required to undergo to ensure that the worker's health will not affect his or her ability to perform his or her job in a manner that might endanger others. The one example we have at the present time that I can share with you is that of the cage operator in mines, where a heart examination is required for those cage operators. There are those both among the labour and the management community, in the mining community, who feel that kind of a test is one that a worker should undergo. It is to contemplate that type of situation.

Mr Mackenzie: Who would be a party to any further broadening of that program? Is this just a decision from the ministry?

Mr Millard: We, of course, under the regulation-making authority can say nothing but that it is the minister's authority to make regulations. However, as we have, I think, been actively trying to do on all fronts in the occupational health and safety area, we are trying to regulate with the full participation of both the employer community and the labour community in developing regulations and I see no reason the same approach would not prevail as relates to this.

Mr Wiseman: If this is a friendly amendment, and I think it is, and I think it achieves what we all want in there—the ministry's lawyers may reflect on some other sections, and not being a lawyer, that, I wonder if our legal counsel could recommend some wording that would achieve the same goal. I think anybody who is under medical surveillance, an employee, should have the right to refuse if he does not want to, or at least to know what is going on, that his health is

being monitored in some way. I think today, as Margaret said, everybody is worrying about what other people know about their health or this sort of thing, and it is kept very precious and sacred. There must be some way the two legal heads can get together here and decide what we can do to maybe accept this. I believe it is something we all, underneath, would accept.

Hon Mr Phillips: I do not have a problem, Mr Chair—I do not know how the committee feels about it—in terms of finding the right wording between now and two o'clock perhaps. I think we are probably all of the same mind, and that is that participation in a medical surveillance program, the agreement to participate, should be the employee's. The employee should have the option of participating or not. I think we felt we were covering that in removing another clause, but there may be a way of providing more reassurance. This may not be the exact wording, but maybe between now and two o'clock we may be able to find that, if that is acceptable to the committee.

Mr Wildman: I think it is clear from the discussion that the ministry wants to ensure that it can prescribe and can require these programs, but at the same time it is amenable and it agrees that the participation in the program should be voluntary. Perhaps there is a different way of wording the amendment that will result in that effect, and if there is, then perhaps we could deal with it right at two o'clock. So perhaps we could stand this down, my colleague's amendment, until two o'clock, and the ministry at that time might have come up with a wording that will achieve what we are attempting.

Mr Dietsch: I would be in agreement to stand it down until the first thing right after lunch. I think what can happen is that both ends can be accomplished. The motion put forward by Mrs Marland is really trying to clearly define that employees who participate in the program have to give their consent, and I think the government is doing some things within the regulations and perhaps there is a suggested change in the words. This particular wording does not do that, but perhaps we can change the wording to accommodate both our objectives.

The Chair: I detect a consensus that we stand down subsection 10(1) of the bill until two o'clock. Is that agreed? Can we move on to subsection 10(3)? Shall subsection 10(2) carry? I do not want to rush you on that. We are standing down subsection 10(1), we are moving now to subsection 10(2), which is next in the bill. Then there is an amendment to subsection 10(3). So I

though we would get rid of subsection 10(2). Subsection 10(2) is carried. We now move to subsection 10(3), where we have a government amendment.

Mr Dietsch moves that subsection 15(3) of the Act, as set out in subsection 10(3) of the bill, be struck out and the following substituted:

"(3) If a worker participates in a prescribed medical surveillance program or undergoes prescribed medical examinations or tests, his or her employer shall pay,

"(a) the worker's costs for medical examinations or tests required by the medical surveillance program or required by regulation;

"(b) the worker's reasonable travel costs respecting the examinations or tests; and

"(c) the time the worker spends to undergo the examinations or tests, including travel time, which shall be deemed to be work time for which the worker shall be paid at his or her premium rate as may be proper."

Mr Dietsch: If we tie that in with the discussion we have just had, I think it is clear that the government's intent was for the workers to have the opportunity to participate, by the first line that is there, "If a worker participates." The intent of this particular motion is that the voluntary participation would ensure that workers would be paid for their time, both travelling to and from the tests and participation in the tests.

Mr Wildman: I am looking at the wording of this in comparison to the bill. Is there any significance—I suppose there probably is not, but is there any significance to the fact that you have dropped the phrase "by the employer"? It is on page 13 of the bill as drafted, clause (c).

Mr Dietsch: Would you repeat your question?

Mr Wildman: Clause (c) says in the bill, "the time the worker spends to undergo medical examinations and tests required by the medical surveillance program, including travel time, which shall be deemed to be work time for which the worker shall be paid by the employer at the member's regular or premium rate as may be proper."

I understand why you have changed "member" to "worker". I do not understand why it said "member" in the first place. But I was just wondering if there is any significance in the fact that you have dropped the phrase "by the employer"?

1100

Mr Dietsch: I think, Mr Wildman, our legal minds in the room have some great explanation

for this profound statement. Legislative counsel maybe can clarify.

Mr Wiseman: This says right at the top that these tests will be paid by "his or her employer."

Mr Wildman: At the top it says the employer shall pay. I am just asking if there is any significance. You can just tell me no.

The Chair: Let's hear from Laura Hopkins.

Ms Hopkins: The original inclusion of the words "by the employer" were a drafting error. They are redundant. The obligation on the employer is set out in the opening few lines of the section. It was a mistake.

Mr Wildman: Thank you.

The Chair: It is refreshing to hear admissions.

Mrs Marland: I am wondering why there is a necessity for the government's amendment to clause (a) "the worker's costs for medical examinations or tests required by the medical surveillance program or required by regulation," saying that the employer shall pay as in clause (a), because surely all of that is covered under OHIP.

Mr Wildman: No.

Mr Dietsch: No.

Mrs Marland: Tell me what medical examinations or tests would not be covered by the government health insurance.

Mr Millard: My simplest explanation of that, and so it is not likely to be exhaustive or all inclusive, is that third-party-referred medical examinations are not OHIP billable, and thus those that are billable directly to the Workers' Compensation Board, of course, those kinds of costs, are not billable. If a party is referred by the employer for a workplace related clinical test, that is not OHIP billable and that is according to whichever act regulates the Ontario health insurance plan. Those kinds of expenses are not OHIP billable. For instance, for the clinics that are operated in Hamilton and Toronto by the Ontario Federation of Labour, a number of their clinical examinations are not OHIP billable because the party is a third-party referral from the employer. Inasmuch as these are regulated and are required as workplace related medical examinations, they are not OHIP billable.

Mrs Marland: Is this coming from you, Mr Millard, or has the employer always paid?

Mr Millard: The employer has always paid for these kinds of tests.

Mrs Marland: Thank you.

Mr Wiseman: I just wonder, carrying on from that, if this was going to save down the road not

only the employer and the employee further damage to his health, does workers' compensation not help with studies or surveillance to improve the workplace and to hopefully get rid of a problem? If they do have medical surveillance in one area, say it is mining, then if they prove something to be a problem there, then all mines can use it. I just think all mines would benefit by that. Why should mine A be saddled with the whole medical surveillance bill and the medical examinations and everything, and why would the workers' compensation not take on a bit of that? I could see it helping other employers because you would not want to do every test. You might do one test in one mine for a certain thing and do another test in another mine, but all would benefit.

The other thing I wondered, going back to what I said about trust and everything of both employee and employer, if I was looking at that as an employer and it says in (a) "required by regulation"—I know what is in the legislation, what I am going to have to pay for as an employer—what could you slip through in regulations that might be even tougher on employers in the future along this line. Have you got something else in mind that you might put in?

I think employers, when they read this piece of legislation, whatever comes out, want to be clear-cut on what their obligations and responsibilities are. If we put in "required by regulation," it would appear to me, as a layperson, that we intend to put something else in. I guess if you had that in mind, I would like to know what it is so whoever is reading Hansard will be able to pick it up and see what their extra added costs might be.

Mr Millard: First portion, WCB contributing to medical surveillance: Medical surveillance as defined here and as regulated is the medical surveillance of an individual employee who may be exposed to a particular hazardous substance in the workplace such as lead. We have a medical surveillance program where if a worker is working in any workplace where there is a level of exposure to lead that makes it appropriate, then every worker has access to that medical surveillance program. Thus it is a reasonable part of the employment contract to have the employer pay for that kind of medical surveillance.

Let me say that when we do epidemiological studies or health studies that contribute to a knowledge base that then allows us to apply better regulations or management techniques to all of the workplaces, it is quite often that the WCB will be a contributor to the funding of that kind of study, as is the Ministry of Labour, as

have been labour organizations, as have been employer organizations, and so they do contribute that way.

Mr Wiseman: The only thing, going back, and I think you have partly answered it, but maybe helped my case, when you said that if you have lead, for instance, in a certain plant, it would help all those people within that plant. Getting back again, there may be other plants doing the same thing, and I am sure they would benefit by that study. Workers' compensation is made up of all employers' contributions and it would seem to me that rather than put all the burden on one, you would spread it over, because the others are going to benefit.

If you have results of that, then I think you would say to plants B, C and D, "We found this result and it is a bad health risk in A and you had better correct that." I think they would have a beef that plant A paid for all of it, but it is going to help everybody, so it should be workers' comp. I would argue that if I was in business. But the other part I asked, "required by regulation," and I wonder what you have in mind that an employer should know about.

Mr Millard: I can only respond as I responded, I think it was to Mr Mackenzie, with respect to the way we try to embark on our regulation-making exercise, and that is with the full participation of both labour and management with us when we design these kinds of regulations. As I said, I am presently chairing a joint steering committee that is equally composed of labour and management, where we are designing regulations specifically for this. We are dealing with medical surveillance and we are dealing with reasonable costs, travel costs, all those sorts of things, with labour and management at the table.

I have nothing up my sleeve in that regard, and if there is something up my sleeve, I think my partners in labour and management at the table are fully aware of what is up my sleeve. So that is the best answer I can give you in terms of there being at least some modicum of guarantee there that there are no surprises.

1110

Mr Wiseman: I just go back to the first one then. I think workers' compensation should be looked into so that it pays part of that cost if it is going to help others besides the one individual.

Mrs Marland: I am just curious to know, after we have discussed all of this, what the counsel's opinion is as to where any of this would fit in with

the Charter of Rights and Freedoms since, today, everybody appeals everything.

I mean, if I go to work for a company and I decide I do not want to take part in any of these programs and the company has a policy in order to protect everybody else—and actually when you mention the cage operators, my goodness, any of us who went down the mines, we would certainly want those operators to have their hearts checked, because I think they even need them checked to ride in them, but there are very obvious cases where as a condition of employment the medical history of those workers should be mandated. But I am just wondering, in today's wonderful world where everybody challenges everything under the charter, whether we have any precedence of a challenge where that is a condition of employment or a condition of a particular job in that workplace.

The Chair: It is going back a bit in the bill, but perhaps Laura Hopkins could give us something.

Ms Hopkins: Thank you, Mr Chairman.

Mr Dietsch: Are we going to that article again? I thought we stood it down.

Mrs Marland: If you have discussed it, do not bother.

The Chair: We have not discussed this.

Mr Dietsch: I thought we stood it down, and I am a bit concerned about the differences, especially in light of the time with regard to paying for it.

Mrs Marland: We can discuss it when we come back to it then.

The Chair: Okay.

Mrs Marland: Who pays for it is all part of it too.

The Chair: Okay. Is there any further debate on Mr Dietsch's motion on subsection 10(3)? If not, are you ready for the question?

Motion agreed to.

The Chair: We are standing down subsection 10(1) until two o'clock, so let's move to section 11.

Section 10 stood down.

Section 11:

Mr Dietsch: I would like to stand down section 11 as well because it has a tie-in with subsection 10(1) in relation to the participation.

The Chair: Is that agreed, that we stand down section 11? Agreed.

Section 11 stood down.

Section 12:

The Chair: All right, section 12. I have no amendments to section 12 before me. Any debate on section 12?

Mr Mackenzie: Hang on. Can we have a bit of an explanation?

The Chair: Okay.

Hon Mr Phillips: Tim, do you want to give an explanation of this?

Mr Millard: This section, before a project begins, will obligate the owner to determine whether any designated substances are present—as I indicated, we have 13 designated substances at the present time—and prepare a list of all those designated substances that are present at the site, because they do require a large effort in terms of compliance and managing.

In the tendering for the project, the employer is obligated to include as part of the tendering information a copy of that list. The owner will be responsible and will be obligated to ensure that the prospective constructor of the project on that property has received a copy of the list before entering into a binding contract with the constructor. The constructor is obligated to ensure that each prospective contractor and subcontractor has also received the list before entering into a binding contract.

An owner who fails to comply is liable to the constructor and the contractors and subcontractors who suffer any losses. A constructor who fails to comply with this section is liable to every contractor and subcontractor who suffers any loss or damages as a result of the sub's discovery on the project.

Let me say that this arises as a result of situations where contracts have been let, only to subsequently discover that there were designated substances on that property and that the contractors and the subs were not aware. We believe that it was the responsibility of the owner to be aware that those designated substances were present.

As I said, there can be a large cost involved in adequately managing designated substances in these areas. We want that to be a part of the reasonable tendering process for doing business, so not only are we trying to protect contractors and subs but also we want to make sure that adequate cost is built into the tender submission to make sure that designated substances are adequately managed once the project is taken over.

Mr Mackenzie: I would be interested in knowing whether the ministry feels this will resolve or help to resolve the serious problem we have had with asbestos removal, where subcon-

tractors, sometimes the contractors, have not notified the workers, and that includes on government projects.

Mr Millard: There is a worker notification obligation under the regulations for asbestos, and also there is a notification obligation with respect to people and contractors working on asbestos under the asbestos regulation. This will make that kind of notification process be built into this tendering part of the process. Certainly we are confident that this will make sure, not just as it relates to asbestos but to all designated substances, make sure that when jobs are contracted or subcontracted, those people are aware of what they are facing in terms of designated substances.

Mrs Marland: I realize it is section 17 of the bill where I want to talk about the protection of formulas. This section, Tim, would not be the section that people like 3M were concerned about because of listing their products. These are designated hazardous substances that would apply not only in manufacturing but in other industries.

Mr Millard: Designated substances are regulated designated substances known to the world. The examples are lead, mercury, asbestos. There is no trade secret component to this issue.

Mrs Marland: Okay, thank you.

Mr Wiseman: I just wanted a clarification. You mention like a new building that is going up, they would have designate them.

Mr Millard: Or a demolition.

Mr Wiseman: How would that work if you were selling a plant, that the person selling it should notify that any substances were in there? They bought it and then found out it was in there. I have had one case like that, and I will not mention it, but is there some protection there for the person who is purchasing a new plant that the seller must disclose that there is before he takes it over?

Mr Millard: No. Inasmuch as there is not explicitly in this section, and inasmuch as the Occupational Health and Safety Act is designed to protect workers, this anticipates a project which is a construction type of project, and thus workers working in that construction project, and is designed to protect them.

Mr Wiseman: Why I say that is there were some renovations to this one, but they found that there was something in there that should not have been there and it cost the new buyer a lot of money to get rid of it. I just wondered if we could put in there that the lawyers would pick it up to make sure that the purchaser was protected a bit.

Mr Carrothers: They handle that in the agreement of purchase and sale, Doug.

Mr Wiseman: Yes.

The Chair: Okay. Any further comment on section 12? If not, are you ready for the question?

Section 12 agreed to.

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Section 13:

The Chair: Mr Dietsch moves that subsection 19(2) of the act, as set out in section 13 of the bill, be struck out and the following substituted:

"(2) An architect as defined in the Architects Act, 1984 and a professional engineer as defined in the Professional Engineers Act, 1984 contravenes this act if, as a result of his or her advice that is given or his or her certification required under this act that is made negligently or incompetently, a worker is endangered."

Mr Dietsch: Really, Mr Chairman, as a result of presentations that were made before the committee, there was a desire to make the wording a little bit clearer and to clarify what the intent was, and this wording has been agreed to by the engineers. It is really to zero in on negligent advice as opposed to not giving the proper information.

Mr Mackenzie: In a letter, there was the observation made that I was interested in. I do not know how far this letter was circulated, but the professional engineers, in their argument at page 2 of their letter, say, "Engineers brought into Ontario from other provinces and, more likely, the US will not be subject to section 13, but the employers of their services will." Is there anything in that comment that should cause us concern?

Mr Dietsch: I am sorry. I did not hear the question, Mr Mackenzie.

Mr Mackenzie: "Engineers brought into Ontario from other provinces and, more likely, the US will not be subject to section 13, but the employers of their services will." I am just wondering what impact that has.

Mr Dietsch: I think Mr Millard has some information with respect to that.

Mr Millard: We are advised that the present wording accommodates that concern inasmuch as I am given to understand in just very recent information that came to me in checking on this that those who come in from outside the province are required to gain a temporary permit in the province to practise their profession. Therefore, we have dealt with and accommodated that concern.

The Chair: Okay. Any other comments or questions on Mr Dietsch's amendment to section 13?

Mrs Marland: I am trying to see whether this is shifting the liability. The liability is still under the qualified or the certified engineer or architect, is it not? I mean, if one of those professionals gives negligent advice, he is the person who is responsible, not the owner of the project. Right?

Mr Dietsch: That is right if that advice endangers a worker.

Mrs Marland: Yes.

Mr Dietsch: Yes, but if the advice is negligent in terms of measurements, say, that sort of—

Mrs Marland: Right. It is an unsafe bridge, yes.

Mr Dietsch: But if it is an unsafe bridge, then they are liable. If it is something that a measurement is out or something and it makes no difference with respect—if the bridge is built four feet over from where it should be, it does not endanger. The structure could still be safe.

Mrs Marland: Right.

Mr Dietsch: That is the clarification, to get it so that it covers the endangerment to the health and safety. But if there were a gap in the middle of the bridge, for example, and the cars were going to drop off the end, then they are liable.

Mr Carrothers: Maybe Mr Dietsch has made the point, but could I just respond.

Mrs Marland: Yes, go ahead.

Mr Carrothers: I think the point of the amendments is to home in to make sure that the architect and engineer are responsible for anything they do negligently or incompetently that injures a worker. There may be any number of small matters that do not lead to injury of a worker, so the intent is not to have them brought into being responsible, shall we say, on a technicality, but only if they do something which causes injury.

As Mike has said, the bridge might be in the wrong place. It does not endanger anybody; it is negligence and it might have certain repercussions in other areas. But if there was an injury on the work site, you might find that somehow the engineers brought in are responsible, and if everybody else is bankrupt, if you know what I mean, they may be the only ones with money and they are therefore the ones who get sued, and they had no real responsibility for it.

Mrs Marland: Are you saying that you have discussed this with the the engineers and architects and they agree with this?

Mr Carrothers: They asked for these changes, if I am not mistaken.

Mrs Marland: Oh, they asked for these changes.

Mr Millard: There is the Association of Professional Engineers of Ontario with whom we have discussed this wording and resolved the concerns that originally existed with our wording in the original bill. We have drafted this in a way, I think, as has been pointed out, that we have now created a very real three-part causal relationship: that an architect or an engineer must have given advice or certification, that advice or certification must have been negligent or incompetent, and as a result of that negligent or incompetent advice or certification, a worker is, in turn, endangered. So all three of those exist in the causal relationship.

With respect to that one association that we dealt with, we are confident that we have resolved the concern.

Mrs Marland: Have you dealt with the Ontario Association of Architects?

Mr Millard: We were approached by the Association of Professional Engineers of Ontario and we dealt with it.

Mrs Marland: Have you spoken to the Association of Ontario Architects?

Mr Millard: I cannot say whether my staff have or not. I am sorry, I cannot tell you that.

Mrs Marland: You see, this seems like a very subtle housekeeping amendment, but I think that it has very far-reaching ramifications. I think it is a very significant amendment, and I will tell you why: because it shifts the responsibility for that workplace; it can do. In some circumstances, it could shift the responsibility for that workplace from the client who hired the lawyer—pardon me, I am looking at one—the engineer.

The Chair: It does rattle you, does it not?

Mrs Marland: I am mesmerized by you, Mr Carrothers.

Mr Carrothers: Don't let my wife hear that.

Mrs Marland: It removes the responsibility from the client, who is the owner of the project, to one of his commissioned people, either an architect or an engineer.

Mr Dietsch: Only if they are liable—

Mrs Marland: Right.

Mr Dietsch: —or if they are negligent on their advice.

Mrs Marland: But how far does this get carried? Does it mean then that a tradesperson, a

plumber or an electrician, can also become liable for negligence?

Mr Dietsch: We are talking about architects and engineers.

Mrs Marland: I know we are, but I am just saying, why are we focusing on two of the professions that might be working on a building site, for example?

Mr Carrothers: The wording is an attempt to avoid that very thing. The change is meant to avoid the very point you have made.

Mrs Marland: Okay, but it still says "as a result of his or her advice that is given or his or her certification required under this act." That means that they are certifying that their drawings are accurate but they are not certifying that the implementation of their drawings is their responsibility. So is the hazard not in the actual result?

It applies to engineers as well as architects, but if I design a project—I think, really, this should have been discussed with the architects. The architects may be quite happy with it, but I think it is a very significant amendment, as I said, because if I design a building and I give you the working drawings, then the person who you hire to build that building according to my working drawings may have errors of interpretation of my drawings. We are saying "if he or she is negligent." I do not know why it is in there.

1130

Mr Dietsch: Let's look at what we are doing. We are saying that if architects or engineers are negligent in their work and that endangers the health and safety of the workplace, then yes, they are liable and this says that they are liable. I do not know exactly what point you are raising, other than if you are saying they should not be liable for carrying out—if they certify a project and it happens to be wrong, then very much so. If their advice has endangered the health and safety of workers, we are saying they should be liable. I am not sure if you are saying they should not be liable. I am not quite clear on the point you are trying to make.

The Chair: I fear the debate is getting somewhat repetitive.

Mr Wiseman: I want to get on this because he is going back and forth on it. Anyway, any one of us in here is not competent to know whether an engineer or an architect has taken and designed it the way we pay them professional fees and one thing and another to do. I, for one, over the years have had people where the engineers have not done a good job and some of the councils I have dealt with were reluctant to go to them because

they have not had the education that the engineer has had. I have said to them, "Go back to them and don't you pay a cent more for it." Municipal drains is one of those that have not done a good job and I feel they should pay.

I think any competent engineer I have dealt with, or architect, when I was in the Ministry of Government Services and the whole bit would welcome something like this to get rid of the people who go around, and there are some, and who do not do just the same work as others. If we were hiring those to build or to make changes in our plant or give us direction on how we should go to make it a safer place, I do not think any of us, as owners of that plant, should be responsible when we are paying good dollars out, and we do pay big dollars, to those sort of people to do what we want them to do.

I am sure that the architects and the engineers—the competent ones, and that is most of them—will be happy with this and would want to get rid of the fly-by-night ones that maybe are going around doing bad work. We had a policy in the Government Services that if they did bad work, they did not get any more jobs for a while until they cleaned up their act, and there are a few of them out there.

Mrs Marland: I know how to clean it up.

Since Mr Millard has said that the professional engineers approached them, as the ministry, and since this wording affects the architects and the engineers—I am well familiar with the Association of Professional Engineers of Ontario—I think if we could confirm over lunchtime that the architects understand what this says—it affects two professions. Why would we only talk to one of them? The answer was, "We talked to the engineers because they approached us."

Frankly, I think if there is something in legislation that is setting out responsibilities under the Architects Act and the Professional Engineers Act, they both have professional association offices right here in Toronto and I think I would like to know that they also concur with it. Otherwise, I am not representing them.

The Chair: I think I hear you requesting that it be stood down. That could be done in two ways, either by consensus of the committee or a motion that asks that it be stood down and we take a vote. Is there a consensus, first of all, that it be stood down?

Mr Dietsch: I would like to move on. I am not sure that it is valid to ask architects whether they agree to be held liable or not. I think, quite frankly, what we are saying in this act—as I have said and many people have already said—is that

they are going to be held liable, so I am not in agreement to stand this down.

The Chair: All right. You do not want this stood down.

Mrs Marland: Then I will move a motion, because the Architects Act is a provincial statute and it regulates how architects in Ontario practice. I think we are referring to a definition in the act and we are assigning to that definition a conclusion in Bill 208. I would move that we just set it down over lunchtime, which is probably an hour and a half, and at least talk to them, as obviously the ministry has found time to talk to the engineers.

The Chair: Mrs Marland moves that further consideration of this section be stood down until two o'clock.

It is not a debatable motion. All those in favour of Mrs Marland's motion, please indicate. Opposed?

Motion negated.

The Chair: Are we ready for the question on section 13? All those in favour of Mr Dietsch's amendment to section 13, please indicate. Opposed?

Motion agreed to.

Section 13, as amended, agreed to.

Section 14:

The Chair: I have no amendment before me on section 14. Is there any debate or explanation wanted?

Mr Wildman: I would like to very briefly say that this is very important, Mr Chair. You chaired the committee that looked into occupational health and safety in the mines of the province, and one of the things we found in that investigation was that health and safety is only taken seriously when it is made a top priority by every level, particularly right to the top. I think this is very important, that we say in legislation that every director and every officer of the corporation is responsible.

The Chair: Is there any other further debate on section 14? Are we ready for the question? All those in favour of section 14 as it is in the bill? Opposed?

Section 14 agreed to.

Section 15:

The Chair: On section 15, I have an amendment to subsection 15(3). Can we deal with subsections 15(1) and 15(2) first? Shall subsections 15(1) and 15(2) stand as part of the bill? Carried.

Mr Mackenzie moves that subsection 21(3) of the act, as set out in subsection 15(3) of the bill, be struck out and the following substituted:

"For the purposes of this section, a biological or chemical agent is not considered to be new if, before a person manufactures, distributes or supplies the agent, it was used in a workplace other than the person's workplace and it is included in an inventory compiled or adopted by the minister."

Mr Mackenzie: The intent is to protect us from untested chemicals, used in the Third World or other workplaces, entering Ontario workplaces unless they are covered in the inventory.

Mr Wildman: I think the significance is the change of the word "or" to "and" in the second to last line. As written in the government's draft, the chemical can be used in this province as long as it has been used somewhere else. We are saying in our amendment that it cannot be used unless it is also included in the inventory compiled or adopted by the minister. In other words, you could have a chemical that is used somewhere in the world. Therefore it would have been used in a workplace other than the worker's and under the government's wording it could then therefore be introduced here.

That is just not enough protection. With the number of chemicals that are invented and introduced in some place in the world in the workplace, you could be looking at chemicals that might be in use in parts of the United States or California or Europe, or for that matter in the Third World, although more likely in Europe, North America or Japan. According to the government's wording, as long as it is used somewhere else, it could be used here. We just do not think that is acceptable.

Mr Wiseman: I just wondered, and perhaps Mr Riddell remembers too, but I always thought the Ministry of the Environment had a committee set up of specialists, that any chemicals that are used in Ontario, whether it be spray for the fields or other chemicals, that they had to adopt those for the protection of everybody and that it was not just a simple matter of a firm bringing in a particular chemical, but rather they had to be tested or proven to these experts, most of whom are not government employees, but rather experts in the field.

Mr Riddell: They have to licence them for use too.

Mr Wiseman: Yes. I just wondered if chemicals that are used—I would imagine it would be the same in industry for anything—would not come under that same surveillance of the Ministry of the Environment and this special committee. I do not think the new government would have dismissed that committee, because it was very helpful to the former government. That is why I thought Jack might be able to help me on that, if it is still in place. If it is, then I feel quite secure that the chemicals used have had a lot of surveillance by private individuals who are knowledgeable in the field.

The Chair: We have a number of people, so maybe we could go through the list and then see if there is a response from the ministry.

Mr Dietsch: I am curious whether the intent of this resolution is to create testing for each and every chemical, whether it has been proven in some other jurisdiction or not. I need some explanation with respect to that. If someone else has proven a chemical and the list of criteria that has been followed is enhanced within the listing from the ministry that it has on these kinds of chemicals coming in, is it your view that you do not feel that list is safe enough?

Mr Mackenzie: I am simply saying there can be chemicals that are not tested. Unless I am misunderstanding this section, if they are in use somewhere else it may be a Third World country where the chemical has not been tested and it could be used here. Certainly, new chemicals coming into the workplace should not be there without prior testing.

Mr Wildman: We are not questioning the ministry list. In fact, we are asking that it be part of the requirement.

Mr Dietsch: Maybe we can get clarification from the ministry.

Mr Wildman: I have one other comment. In response to Mr Wiseman, if we can get some clarification from the ministry that might be helpful, but it seemed that the thrust of his remarks was that we should not have any reference in this legislation at all. He seemed to be speaking even against the government's wording because it was handled, he felt, by the Ministry of the Environment. If that is the thrust of what he is proposing, I am diametrically opposed to his position.

Mr Wiseman: If I can clarify that, and it will just take a minute. What I was saying was that it would appear to me—I do not know whether it was Bud or Bob who had made this—that if they bring it in from another country, it just comes in

and automatically gets into the plants and one thing and another. I am just trying to make the point that it has to go through the Ministry of the Environment. I hope the new government has not changed that committee, that it is still the same, because they really do, and I think Jack would agree, go over them with a fine-tooth comb.

If it is just, as my colleague says, that the ministry is responsible to make sure that is done, I have no problems with that, with supporting his motion, if it just putting the emphasis back on the ministry to make sure that there was—

The Chair: Let's get a response. There have been several requests for information from the ministry: Mr Millard.

Mr Mackenzie: Mr Chair, just before Mr Millard responds, can I make it clear that we have no objection also to looking at testing from other sources, but what we are concerned with, and you have to be testing, is that materials not come here or be produced that have not been tested just because they have been used in other jurisdictions.

Mr Millard: While certainly there is empathy and a want to be able to accomplish that, the practicalities of having a list in Ontario totally harmonious with all products that have been tested that are already in use in workplaces is a monumental one.

We do, however, have a Canadian Environmental Protection Act that is developing a list for Canada for requirements for notification. We have pledged ourselves to at least harmonizing ourselves with the Canadian Environmental Protection Act list so that employers will be subject to a similar notification requirement under the two, and hopefully not a duplicated notification requirement. As I say, I find it very difficult in terms of the practicalities to ensure that our list is comprehensive of all substances already used in workplaces and tested.

I know what the concern is. Practically, I have a great deal of difficulty knowing how we would deal with it except to continue to attempt to harmonize myself with the Canadian Environmental Protection Act notification list and we are doing that.

Mr Wiseman: Could I just ask on that group, Canadian environmental protection, would any chemical coming in that would be used—it would have to be okayed with them, would it not—

Mr Millard: They will develop a list.

Mr Wiseman: —before you would allow that to be used by a plant here in Ontario?

Mr Millard: That will be up to the Canadian environmental—what is the name of the federal department? The Department of the Environment. Each of the provincial and territorial ministries of environment is contributing to that one list for Canada. So we are using the provincial Ministry of the Environment as our pipeline to the Canadian Environmental Protection Act people to have the concerns accommodated on the notification list.

Will it be comprehensive of all chemicals, all substances? I cannot assure you of that.

Mr Wiseman: I want to be clear on this because none of us wants any of our employees working with chemicals that might be harmful to them. Am I right—you talk a little like a politician but you are a good one—that you said that no chemical would be used in our plants until it had the blessing of whatever this federal group is? What Bob's fears are could be true: is that right? If it is not one, it has to be the other.

Mr Millard: There can remain a concern, and will remain a concern, that there may be some substances that are in use in workplaces that have not been tested. That is true. There is not a universal testing procedure for all substances.

Mr Wiseman: What can we do to make sure it is tested before we get out there and maybe harm some workers? How can we tighten that up?

Mr Millard: I think, if we can, to continue to work with the Canadian Environmental Protection Act people so that list is as exhaustive as possible.

The Chair: Is the committee ready for the question on Mr Mackenzie's motion?

Mr Mackenzie: I want a recorded vote on this because I think it is fundamental.

The committee divided on Mr Mackenzie's motion which was negated on the following vote:

Ayes

Mackenzie, Marland, Wildman, Wiseman.

Nays

Bossy, Carrothers, Dietsch, Epp, Lipsett, Riddell.

Ayes 4; nays 6.

Section 15 agreed to.

1150

Section 16:

The Chair: We have an amendment by the Conservative caucus. While Mrs Marland is

arranging that, any other comments on section 16 as in the bill?

Mr Wildman: Am I to understand that the purpose of the government wording is to make it possible for emergency workers such as firefighters to exercise the right to refuse?

The Chair: That is a unique interpretation of the section.

Mr Wildman: Obviously, if they were to see that there was a posted list of chemicals so that it would be dangerous to enter the workplace, they should be able then to use their discretion. Is that right or wrong?

Mrs Marland: Would you like me to move it first?

The Chair: Let's move the amendment so that we can debate it.

Mrs Marland moves that subsection 22a(7) of the act, as set out in section 16 of the bill, be amended by inserting the words "by the ministry" after the word "prescribed" in line 2.

Mrs Marland: That is really sort of a housekeeping thing to say who is doing the prescribing. However, is this where you wanted to hear from me also on the protection of formulas and the release of information as to what is in a company inventory?

Interjection.

Mrs Marland: Okay, it is section 17. Is that right?

The Chair: Yes, 17 is the one that deals in great detail with section 22 of the existing act.

Mrs Marland: Then I will just let this one go as it is. It is just to clarify who does the prescribing.

The Chair: Are you leaving your amendment before the committee, though?

Mrs Marland: Yes.

The Chair: Any further debate on Mrs Marland's proposed amendment? Are you ready for the question?

Hon Mr Phillips: I gather that someone from legal would say that the term "by the ministry" is not necessary in that it is assumed it is by the ministry. Is that right?

Mr Millard: Yes, "as prescribed" means as per the prescribed authority for the minister to make regulations. The wording "as prescribed" is used throughout the act and means the minister's regulation.

Mrs Marland: It means the almighty, does it?

Mr Wildman: Can I move an amendment that it be as prescribed by the Ontario Federation of Labour?

The Chair: Is the committee ready for the question? That is the question.

Mr Wiseman: Can I just ask for clarification? When we met with 3M and, I think, some others, they mentioned that they involved the firemen and involved the workers and told them what chemicals might be in the plant, one thing and another. I thought that was a good move, to make sure that they brought them in and showed them so that in the case of a fire or whatever, both the employees and the firemen would know what to do and what was there.

Is there someplace in the act that makes it compulsory for a firm to do what I thought 3M did, where they are dealing with chemicals or with something that they do not want disclosed but makes some reference with the firemen that they could maybe refuse to go in or something like this? I have never run across it yet, but there may be a part in here that does set out that an employer should bring in the fire department, make it familiar with what it is maybe going to have to fight some day, hopefully not.

The Chair: Will you let Mr Carrothers have a say in this?

Mr Carrothers: I just wanted to point out that if we look at the Occupational Health and Safety Act, section 1, the definitional section, the definition of the word "prescribes" means "prescribed by regulation made under this act." I guess having worked with legislation and interpreting, I would think we would want to be consistent across the board. Inserting phrases that are slightly different from the standard is the stuff of which loopholes have been made, and while I used to make some income dealing those, I do not want to be responsible for creating them. So I do not tend to support Mrs Marland's change, because I do not think it is really needed. It is already very clear. Who makes it? The cabinet makes it.

The Chair: Any further debate on Mrs Marland's amendment? All ready for the question? All those in favour of Mrs Marland's amendment, please indicate. All those opposed? It is defeated narrowly.

Motion negated.

Section 16 agreed to.

Section 17:

The Chair: We move now to section 17. I have no amendment before me on section 17. Is there any debate on section 17 of the bill?

Mrs Marland: Yes. Which subsection of 17 is it that deals with the concern of these companies

about the confidentiality of their products' formulas?

The Chair: I think this is the part of the bill where you should raise your concerns, because section 22 is a major part of the actual act dealing with this matter.

Mrs Marland: If I can refer back to the Canadian Federation of Independent Business brief—actually, I was looking for the 3M brief, but I cannot pull it to hand.

The Chair: Would it be helpful if I referred you to section 22c of the actual act? Not of the bill, but of the act.

Mrs Marland: Thank you.

The Chair: It is on page 50, if you have the same thing.

Mrs Marland: Actually, clause 22c(1)(a) almost refers back to section 16 that we have just dealt with. But it is interesting. It is already in there about the data sheets being available for examination by a worker, so that is not new.

Mr Carrothers: No, it is not. It was in the existing act passed by previous legislatures.

Mrs Marland: Yes, but it is in your bill, Mr Carrothers, on subsection 16(7) that we have just passed is dealing with—

The Chair: I am sorry, could I be helpful there. Subsection 16(7) has to do with the floor plan rather than the hazardous materials data sheets.

Mrs Marland: Okay. Also, I notice that 22c(1)(d) says that this information will be “furnished by the employer to the fire department which serves the location in which the workplace is located.” The concerns of the Canadian Federation of Independent Business in its brief said—this covers both the section we have just voted on and the one we are dealing with now—“The requirement to make floor plans available to employees may not always be necessary or practical and has the potential to breach industrial confidentiality and threaten firm security. We recommend that this section be amended to provide that floor plans need only be provided as prescribed by the ministry.”

Now, I am trying not to go back to the section we have just passed, but where we are dealing with the breach of industrial confidentiality, obviously in a competitive world, if we can interpret the industrial confidentiality as meaning what a company like 3M puts into the manufacturing of its special tapes and the other items we were shown that day, sandpaper and so forth, we could take any company that manufactures

anything and see the necessity to protect the confidentiality of what it has in those workplaces in terms of materials to manufacture its product.

1200

Now, we also heard when we were on the road that WHMIS made a requirement to have these materials listed. What I am wondering is if the ministry could explain, where there is a difference between the WHMIS requirements—and under WHMIS, a federal statute, there is a wording that does address the concerns of these companies about releasing their formulas. Do we, in Bill 208, have a similar protection for those companies that addresses that particular concern? If we do, I do need to say any more about it.

Mr Millard: Thank you. I believe there are two parts to the concern. The first part of the concern of employers such as 3M is with respect to products that they may have declared as trade secrets by the workplace hazardous materials information review agency. That is a federal agency, and that agency hears representations on application from employers with respect to materials that they believe are trade secrets and trade secret information. If they are granted trade secret status, then they are able to protect that trade secret information from material safety data sheet and labels that must accompany substances.

The question put to us is, do we have similar protection in Bill 208 to that required by the WHMIS agreement to protect that from freedom-of-information legislation? The answer is no. We are dealing with the Management Board of Cabinet, which is responsible for administering the Freedom of Information and Protection of Privacy Act, and we are confident that that protection will be granted through amendments to the freedom-of-information act that will provide protection of trade secrets in the Occupational Health and Safety Act.

Let me say that in the interim, the workplace hazardous materials information review agency will send no trade secret information to a jurisdiction that does not have that protection in its own legislation. As a result, Ontario does not have access to that trade secret information, and therefore we could not disclose that trade secret information, because the hazardous materials information review agency will not give us that information. So until we have that protection through the Freedom of Information and Protection of Privacy Act, we will not get that trade secret information from the federal body.

The second part of the concern is the one to do with respect to the obligation to make the material safety data sheets, which must be present for every controlled product in the workplace for the protection of workers, and let me hasten to add that 3M has not expressed any concern about making those material safety data sheets available to its employees.

The concern that has been expressed in what already exists in the act, in the existing act, is an obligation for the employer to furnish to the medical officer of health under clause (c) or to furnish to the fire department under clause (d) or to file with a director the material safety data sheets. The concern is that there is more contained on the material safety data sheets for the employees than is required by legislation. In making that material safety data sheet available to a larger public, they believe there may be some jeopardizing of their trade secret information.

There may well be ways for the company to make sure that the material safety data sheets are complete and meet the requirements of the workers and meet the requirements of the law for the safety and health of the workers and at the same time not disclose what they believe may be some—not even trade secret information but information they believe, if put together in the right set of circumstances by the right people, could lead those people to determine what the trade secret might be. So I think the company is prepared to look at it making sure that it gives all the information required to the workers on the material safety data sheet and at the same time not reveal to the larger public, through the medical officer of health or the fire departments, any trade secret information.

Those are the two concerns. We are able to deal very explicitly, with the one concern about trade secrets by having the Freedom of Information and Protection of Privacy Act accommodations made. In the interim, as I said, we have no access to that trade secret information, so we could not disclose it.

Mrs Marland: So what you are saying is that right now you are working through the freedom of information act to address the same protection that they are given now under the federal statute as far as trade secrets. You are in the process.

Mr Millard: Yes, we have been been pursuing that. In the interim, we have no access. As a jurisdiction, we have no access to any of that trade secret information from the federal body.

Mrs Marland: And Bill 208 is not granting you that access as a requirement of the bill.

Mr Millard: No.

Mrs Marland: So you are saying that the concerns that were brought to the committee by 3M need not be concerns of those companies. Is that what you are telling us today?

Mr Millard: No, I am not saying that. As I have said, they have a continuing concern about their obligations to make material safety data sheets available to medical officers of health and to fire departments. Their concern is that they may put more information in the material safety data sheet than is required by law or is required for the protection of workers. It may be a function of their needing to work with their own material safety data sheets to make sure they protect workers, meet the obligations of the law, but do not go beyond that in terms of containing information that may be of some use in industrial espionage to a competitor.

The Chair: Before we go on, Mrs Marland, I am developing a speakers' list on this issue, and adjournment time is here. Does the committee wish to complete the debate on this section, or do you want to wait until two o'clock to complete the debate?

Mr Wiseman: Could I ask a question on this one?

The Chair: No, Mr Wiseman; let's determine this first and then we will carry on with the debate.

Mr Dietsch: I have no problem waiting until after lunch to go through this. It seems to me that there will be extensive discussion.

The Chair: I have a speakers' list, so I think we are going to have to—

Mr Dietsch: I would be in agreement to adjourn and to come back at two.

Mr Wiseman: I just want to raise that the minister might think over lunch of perhaps giving us a guarantee. I do not feel so comfortable, Tim, with Management Board making the decision to change the freedom of information act to accommodate 3M and others. I would feel a lot better if the minister would give us a commitment that this act will not go forward, will not be proclaimed until it has been worked out that the freedom of information act is in place and the whole bit. Otherwise, we would be a long time this afternoon.

The Chair: We are getting into a further debate, Mr Wiseman. I thought you just wanted a matter for clarification. The committee is adjourned.

The committee recessed at 1210.

AFTERNOON SITTING

The committee resumed at 1407.

The Chair: The resources development committee will come to order, as we continue perusal of Bill 208. When we adjourned, we had stood down three sections and were in the middle of debating another one. We had stood down section 7a to wait until we got to section 19, to include that because of the work refusal; subsection 10(1) was a motion of the government, plus an amendment by Mrs Marland. I wanted to ask you if you want to proceed with that now or come back to it.

Mrs Marland: Whatever is the pleasure of the chair.

The Chair: If we are ready to proceed, we should tidy it up.

Mrs Marland: That is fine.

The Chair: So we are back on 10(1), where Mr Dietsch had moved a government motion and then Mrs Marland had moved an opposition motion. That is what we are in the process of debating.

Mrs Marland: With the committee's indulgence, should I just withdraw the other motion?

The Chair: You can withdraw your motion if you like.

Mrs Marland: That is probably the best way.

The Chair: Okay. Mrs Marland has withdrawn her motion, which was to amend Mr Dietsch's motion. We are now then at Dietsch's motion. Is there any further debate on Mr Dietsch's motion? If not, are you ready for the question? All those in favour of subsection 10(1)? Opposed? It is carried.

Motion agreed to.

The Chair: We had already carried the rest of section 10.

Section 10, as amended, agreed to.

The Chair: We had also stood down section 11 of the bill. Do you wish to open that one up now as well?

Mrs Marland: I do have a motion for section 11.

Section 11:

The Chair: Let's do that then. It is being distributed.

Mrs Marland moves that section 11 of the bill be amended by adding the following subsection:

"(2) Section 17 of the said act is amended by adding thereto the following subsection:

"(3) A worker is not required to participate in a prescribed medical surveillance program unless the worker consents to do so."

Mrs Marland: I am just wondering, Mr Millard, and I am thinking of the examples that were given this morning of a cage operator, or where it is very crucial that a person's health condition be known because it affects very directly the safety of other workers, can the employer make it a condition of employment that a person is required to be part of a medical surveillance program? What are you shaking your head at, Mr Carrothers?

Mr Millard: Subsection 3, as moved by Mrs Marland, is not a specific safety-related medical test. It is a medical surveillance program. In that instance, I think the answer to your question is that this would not be for the type of test you are talking about. In the other, we will retain the authority to prescribe those kinds of safety-related medical tests where a worker would be required to undergo those. The example I used was the cage operator in a mine.

With respect to the other question, and I am really not competent to answer what the charter will or will not allow with respect to conditions of employment, the Ontario Human Rights Commission has a policy that pre-employment medical tests are not appropriate.

Once employment has taken place, then I think it is a question probably of employment law and contract law between the employee and the employer.

Mrs Marland: It is probably an interesting area that will yet be challenged and dealt with under the new charter, not that the charter is so new, but I mean we are getting new challenges all the time under the charter. So I can appreciate why you would not have the answer.

The Chair: Any further debate on Mrs Marland's amendment to section 11? All those in favour of Mrs Marland's amendment, please indicate. Opposed? Carried.

Motion agreed to.

Section 11, as amended, agreed to.

Section 17:

The Chair: We now progress—that is the right term—to section 17 of the bill. We were in the process of debating 17.

Mr Wiseman: I wondered at 12 o'clock whether we could stand this down until we get a

commitment from the ministry—I am sure it would—that it not bring it forward until we had cleared this area up, where freedom of information, and whether or not the Management Board had pulled this from the rest of the freedom of information that goes before it, that it would clear this. I should have my statement a little clearer in my mind here.

I have had different letters at lunchtime today. Somebody must be knowing where we are at and everything. I have got two or three letters faxed to me, one from 3M and one from Procter and Gamble, and they would like to make sure that this section of the bill does protect them as they have been protected in the past.

I think the deputy said this morning that they were working with the federal government, but I would feel a little better if there were some sort of memorandum of understanding with them that the same protection would be in there, because in each case they did tell us that under the new bill they would have to disclose what chemicals they had on the premises and that that could be used by their opposition and might hurt not only those employers but the employees of those plants, if someone else came in and took their formulas for making whatever. If we could get some sort of agreement that this be held down—I realize this cannot be done overnight—perhaps when it goes back into the House before the bill is passed, we could get the assurance for those people that this has been corrected.

Mr Dietsch: In the interests of time, we would be in agreement to stand it down. I am not sure in fact whether they can be accommodated or not, but certainly Mr Wiseman as well as Mrs Marland before lunch had made some valid points. I think it would allow some additional time.

1420

Mr Wildman: Just a very short comment. As far as I can see, 3M's concerns are with the current legislation, not with the amendments. If the proposal to stand down, which has been concurred with by the parliamentary assistant, is an indication that the government intends to move a new amendment to the current legislation, then I could understand it, but if it does not result in that, I do not see the purpose of standing it down. I would certainly be opposed to the suggestion that we should hold up the declaration and implementation of this bill, if and when it is completed by the House, until something happens with another piece of legislation like the Freedom of Information and Protection of Privacy Act.

Mr Dietsch: That certainly was not the intent, Mr Wildman.

The Chair: The committee must decide whether it wishes to postpone debate on this section or to proceed now.

Mr Wildman: Really, I would like to know, does the government intend to move an amendment to the bill?

Hon Mr Phillips: I think we have heard the concern of two or three companies. I am not sure we can accommodate their concerns, because I think there is, as part of this bill, a right of the public to know certain things. The only thing that I think may be worth while, if it is feasible, is between now and when the House goes back to examine whether we can accommodate their needs without jeopardizing the fundamentals of the bill. I think that would be the one thing that may be worth doing over the next two weeks, to examine that. As I say, I think we have had discussions and it has been somewhat difficult to find a resolution that will satisfy them.

So I would not want it to be assumed, if we did stand it down, that we are going to find a resolution that satisfies them. We will search for that, but in the end we may have difficulty in marrying the two needs. So I guess it may be worth while to allow ourselves that flexibility for the two or three weeks. As I say, I would not want to promise that we can accommodate those companies, but at the same time it may be worth spending a few working days on it.

Mr Wildman: Just in response to that, I want to emphasize that if the government is going to look at this, from our point of view our main concern is the safety of the public and of workers. There is no way we want to have any kind of amendment brought in that is going to jeopardize the safety of firefighters, for instance, if they have to go into a workplace that uses dangerous or hazardous chemicals. They must have the right to know where they are located and what the effect of intense heat on these chemicals might be, particularly after we have seen the events near Hagersville in the last few weeks and the kinds of dangers that those people who protect the public safety experience. We must do everything we can to protect them.

Mr Mackenzie: Also, there is nothing more fundamental, as far as we are concerned—and a major shortcoming in this legislation—than the lack of coverage for the public sector as well as some of the right-to-refuse provisions. If the government is prepared to take another look at this section, it may very well be that we should be

standing down the other two sections to see whether we can take a further look at those as well.

Mr Wiseman: We are not talking here about, I think, the protection of the worker or the fireman, and 3M has already told us that it brings the firemen in and that is what I asked this morning, was there a part in the act that said that? What 3M seemed to me to do, to make sense, was to bring the firemen in and let them see where the chemicals were, what chemicals were there, talk to their staff about the hazards of the chemicals, the whole bit.

I think what my friends behind me are thinking is that they do not realize this is a two-way street. If someone gets that formula, whatever it is, whether it is Procter and Gamble or 3M, if they get that and they produce it in another place or in another country or whatever the dickens the thing may be, it could mean jobs to those people. We are not worried about the safety, we are trying to correct the safety in this bill, the occupational health and safety, but let's not throw out the jobs in the meantime. That is what I am saying here.

We did hear this morning, I think it was the deputy or maybe it was the minister, that Management Board was looking at this. If it is within this government's prerogative to change freedom of information to allow this to be in there, then two or three weeks is a reasonable length of time to make that decision. Management Board is sitting every week. This ministry could get in a proposal to them; I am sure in two or three weeks that could be handled.

The Chair: May I make a suggestion to the committee? We have some options here, because I do not think there is unanimous consent. One would be to move a motion that this not be dealt with now but be dealt with at a later time. The other would be to pass this section as it now is in the bill, in which case the government then, if the appropriate discussions take place, could move an amendment to the bill when it comes back to the House, when the House goes back. In either case, when it comes back to the House it is going to be printed the way it is now. So I think the committee should make that decision as to which it wants to do. Either one is appropriate.

Mrs Marland: Was I next?

The Chair: Yes. I was just trying to expedite the debate so that we do not carry on a debate if we have decided to move an amendment.

Mrs Marland: When you say it would be printed the way it is now, that means the way this one is.

The Chair: Yes. The way Bill 208 is with amendments already passed. But this one would be the way it is now because it has not been amended.

Mr Wiseman: I would feel more comfortable the other way.

The Chair: There is no consensus. Mrs Marland, are you with me here on this one?

Mrs Marland: Yes, I am.

The Chair: Does the committee wish to carry on debate on section 17? Or do you wish to postpone debate until it goes back into the Legislature? I think that seems to be the preference of the committee.

Mrs Marland: Would you like a motion to postpone it?

The Chair: Yes, please, so that there is something on the record for this.

Mrs Marland moves postponement of the clause-by-clause discussion around section 17 of the bill until it is in committee of the whole House.

The Chair: Okay, you have heard the motion. It is one of those motions that is not debatable. All those in favour of Mrs Marland's motion? Opposed?

Motion agreed to.

Section 18:

The Chair: That means we are leaving section 17 and moving to section 18, which renames a section of the original bill.

Section 18 agreed to.

Section 19:

The Chair: Now we move to a section of the bill that may engender some debate. Since we have agreed to debate section 7a along with section 19, there—

Mr Dietsch: Do you want section 19 read in its entirety, Mr Chairman? Then it is on the record and we can start breaking it down.

Mr Mackenzie: It is a question of which comes first.

The Chair: Your motion comes first, Mr Mackenzie.

Mr Wildman: I would suggest that since the first motion we are going to put deals with the matter that relates to section 7a as well we should deal with that one first, if that is acceptable.

The Chair: I am sorry; you lost me.

Mr Wildman: The motion we are going to put on subsection 19(1) deals also with section 7a.

The Chair: Right; that is the first amendment anyway.

Mr Mackenzie moves that subsection 19(1) of the bill be renumbered as 19(1a) and that section 19 be further amended by adding the following subsection:

"19(1) Subsections 23(1) and 23(2) of the said act are repealed."

1430

The Chair: It is agreed, is it not, by the committee that we are debating section 7a and this one, and at the conclusion of the debate we vote on those sections? I think that is agreed upon by members of the committee. Debate on Mr Mackenzie's motion?

Mr Mackenzie: This really is one of the fundamental sections of the bill, and as I said yesterday it is an area where we really had a copout. It is to me just not acceptable that a government that is going to require some of its own people to carry out and administer this act as well, is going to itself prohibit a good number of its workers from being covered under this legislation. I do not think you can excuse it and I do not think you can justify it. I do not think there is justification for it in the rest of the province or in the rest of the country either.

I think there are too many examples of what we have done to employees in the various ministries. I think the examples of injuries, whether it is in the Ministry of Health, whether it is the security officers—there are just too many examples where they top the list in terms of their injuries and claims before the board.

I still do not know a better way to summarize it than the example we used yesterday with Krista Sepp. If this committee is prepared to allow these workers to be exempted from this legislation, we are in effect saying that somebody like Krista Sepp does not have the right to say no to a serious work situation that could result in her being both raped and killed, and we have had other examples as well.

I do not know how anybody on this committee could really live with himself or herself after going through the exercise we have gone through and heard some of the testimony we have heard before this committee, and say, "We're prepared to give the right to others in our society, but we're not prepared to give the right to our own employees." I just have a real difficulty with the exclusions that are in this section, and I would hope that the members of this committee will take another look at it.

The Chair: Any further debate on Mr Mackenzie's motion?

Mr Wildman: I would have thought we might have got a response, but I want to make a couple

of comments. I spoke on section 7a yesterday. I want, for the benefit of the committee—I am sure most of you will have consulted your copy of the current act, but to be clear, section 23 specifically states that the right to refuse work does not apply to anyone who is a member of a police force, a full-time firefighter, a person employed in the operation of a correctional institution or facility, or training school, centre or place of secure custody designated under section 24 of the Young Offenders Act of Canada, a place of temporary detention designated under subsection 7 of that act or any similar institution, facility, school or home such as the group home that Krista Sepp worked in.

Also, subsection 23(2) sets out that, "Where circumstances are such that the life, health or safety of another person or the public may be in imminent jeopardy," the people who work in the following kinds of institutions do not have an unrestricted right to refuse unsafe work, and it lists a large number:

"1. A hospital, sanatorium, nursing home, home for the aged, psychiatric institution, mental health or mental retardation centre or a rehabilitation facility.

"2. A residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental handicap.

"3. An ambulance service"—we had the examples yesterday. We referred, again, to the examples that were brought before the committee of ambulance officers who died because they could not refuse what they perceived to be an unsafe work condition. It goes on "or a first aid clinic or station.

"4. A laboratory operated by the crown or a laboratory licensed under the Public Health Act.

"5. Any laundry, food service, power plant or technical service or facility belonging to, or used in conjunction with, any institution, facility or service referred to," in the above paragraphs. A laundry or a power plant?

The section goes on to say that the worker may refuse, and talks about how the work refusal can take place, but the fact is that these two subsections essentially mean that public sector workers are discriminated against by their employer, the government of Ontario, and I use that word advisedly.

I wonder, if this amendment is not carried, what this really means in terms of the Charter of Rights and Freedoms that my friend referred to in another context. I wonder how we can justify

this, certainly legally, but I think even more important, morally.

If the government could set out, could explain or could give examples in the private sector where the right to refuse has in fact been abused, if the Ministry of Labour could give us examples, then I might understand its reasoning behind this section as it applies to public sector employees, but the ministry itself has said repeatedly during the hearings that the right to refuse has not been abused in the 10 years that workers have had that right.

We had some evidence from some business representatives, not very many, who indicated that they thought the right to refuse had in fact been abused on occasion. That was disputed by their employees and it certainly was not supported by the ministry. As a matter of fact, the employers who raised those issues before us could not give us very much evidence of more than one or two or three occasions where they thought the right to refuse had been used in a way that it should not have been.

We do not have evidence that the right to refuse has been abused in the private sector, so why do we believe that the people who have the responsibility for caring for the sick, the aged, the weak in our society, the people who have trained and chosen that area of work would somehow abuse it? If an individual who works underground in a mine or works on an assembly line in an automobile plant does not abuse the right to refuse, why do we think nurses would, why do we think police officers would or why do we think Krista Sepp would have?

As my colleague indicated, these are the very people whom we entrust with the responsibility to care for the public and to protect the public from danger. If we can trust them with that grave responsibility, surely we must believe that they have enough responsibility and self-discipline to exercise this kind of right in a responsible manner. If you do not trust them to have that kind of responsibility, then why on earth are you giving them the responsibility of caring for the weak and the sick?

I wonder too about something that perhaps can be answered here. In another section of the act, section 17, it sets out:

“(2) No worker shall...

“(b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself or any other worker; or

“(c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct.”

1440

If we say that that section of the act applies to public sector workers as it does to private sector workers, but at the same time we say to the workers in the public sector that they do not have the right to refuse unsafe work, is there not a contradiction?

I understand that indeed some workers have in fact attempted to exercise what they consider to be their responsibilities under subsection 17(2), but the ministry and their employer have not supported them in that regard. I would like that explained.

Yesterday, I referred to a couple of things. I referred to the case that was brought before us by the ambulance officers. We talked yesterday about the case of the officer who brought his concerns to this House, to this Legislature and talked to MPPs about dangers of contracting out and what that might mean, not only for the ambulance officers themselves but also for the patients they are transporting. That individual within a few days was himself dead, because he was right and because he did not have the right to refuse.

We have had the example also of the Point Pelee disaster. We have had examples of workers using job action in the jails because of overcrowding and the problems, not just for the jail guards but for the inmates. These are people who are concerned about the members of the public for whom they are responsible, as well as about themselves.

Yesterday I also mentioned conservation officers. I have been informed since that time that a conservation officer indeed could not refuse. But even if we accept, and I do not accept it, for the sake for argument that a conservation officer, a police officer, a firefighter—to use those examples—or a person who works in a group home should not be able to refuse to do unsafe work in an emergency situation, then why can we not design language that would in fact allow them to exercise the right to refuse in the nonemergency situation?

We are not suggesting—I do not think the police officers and the firefighters are suggesting—that if there is a crime being committed that might cause danger to the public or if there is a fire that might cause danger to the public, members of those professions should be able to say: “Sorry, this is a dangerous situation. I’m not going to go into it.” We are not suggesting that. Members of the police forces of Ontario and members of the fire departments of Ontario realize that is their responsibility, to protect the

public. But why do we not say to those people, "Yes, we appreciate what you do to protect the public in emergencies, but in the nonemergency situation you do have the right and should have the right to say, 'If there's something dangerous that might endanger me or my fellow workers, I not only have the right but the responsibility not to do it.'"

For instance, if a firefighter or a policeman was working in an office or a firehouse that had asbestos on the pipes that was coming down and there were asbestos fibres in the air, why on earth would they not have the right to say, "We can't work in that location until it's cleaned up"? I do not see how that in any way endangers the public. As a matter of fact, if the public has to go into that location to have access to the fire department or the police officers, by refusing, those individuals would be protecting the public, not endangering it.

Why is it that a public servant janitor or custodian who works in this building or in another government office building, or in a jail or in a group home or a hospital or whatever and who might be exposed to solvents and cleaning fluids and so on does not have the right to refuse? If he does, show me where he does. In other words, where we are talking about hazards that are nonemergency hazards, how does the government justify not extending the rights to the public sector that this bill will extend to the private sector?

To set up committees as is suggested in section 7a to resolve this is not going to resolve it. We have seen the experience with the committee on the hospital regulations and the hung jury. We got an agreement but then nothing happened. We have no evidence that will not happen again.

I think we owe it to the people we put in the jobs to protect the public in this province to say that they have the right to protect themselves, at least in nonemergency situations.

I think we owe it, as I said yesterday, to Krista Sepp to say to her family and to other individuals working in similar types of jobs today that because of the sacrifice of that family and the death of Krista Sepp, we are going to say to the public sector of this province: "Nobody ever again will be put in the same situation that Krista Sepp was. If there is a situation where the worker should be informed, he or she will be informed, and where the worker needs to have backup, unless that worker gets backup, unless that worker is given assistance to ensure that his or her safety will be protected, that worker has the right to refuse."

I have not heard anything from the government in all of this process that justifies not giving these people, the employees of the public, of the province, the right to exercise the same rights that all other workers are being given in most other workplaces in the province.

Mrs Marland: I am quite cognizant of the fact that this Occupational Health and Safety Act was originally brought into force in, I think, July 1975 or—

Mr Wildman: In 1978.

Mrs Marland: —and then revised in 1980 and 1984, in the good old days. There must be some reason why the wording of this Occupational Health and Safety Act is not being changed in this section, again with another look into the closet, which Bill 208 is doing; it is opening up the whole subject again. Because I do not profess to be an expert on occupational health and safety, I would like to hear from the government the answer to some of the questions my colleague Mr Wildman has raised.

I do have some very definite opinions on this act as it remains, even after Bill 208. I do not make any apologies for the origin of the act because I was not here then. I would have the same questions that I have today, but before I ask my questions I would like to know from the minister why some of the things that have been suggested that could happen through Bill 208 amending this Occupational Health and Safety Act and that would enhance the safety and protection of workers in some jobs would not have been done.

1450

I say right off the bat that I do not agree with the exemption for police officers and firefighters, because the people who choose those jobs, first of all, choose the jobs knowing the risks and the hazards and the dangers, to use those wonderful words we discussed yesterday. They are hazardous jobs and they are dangerous jobs, and because they are that kind of job, firefighters and police officers are trained for that job. They go into it knowing what the risks are. God knows I would not want any one of my family to be in either of those jobs, but there are people who choose those jobs knowing the risks and they are trained for those risks and I would not be willing to exempt those two. But when you start looking at some of these other jobs, frankly, some of the risks and hazards that those people do face in the workplace I think are horrific. Time and time again we have had heartbreaking examples and stories. Under subsection 23(1)—are these bills

not a pain, the way they are?—is the bottom of the page, subsection 23(3), where it starts “Refusal to work”?

Mr Wildman: Yes.

Mrs Marland: When you turn over on to that page to clause 23(3)(a), it is amazing to me that where it lists “any equipment, machine, device or thing he is to use or operate is likely to endanger himself or another worker,” he has the right to refuse work if “the physical condition of the workplace or the part thereof in which he works or is to work is likely to endanger himself.” How come this is all male, by the way? Why have we not amended this to make it—or is Bill 208 going to put the gender straight?

In any case, in (a), (b) and (c) it talks about physical condition of the workplace and equipment, but it does not talk about people; it does not talk about persons. Why would the government not, without exempting those people who go into jobs, as I have said, like police officers and firefighters, but go into these other jobs—if they can say that a piece of equipment puts them at risk to endanger themselves, how come you cannot put that if people are likely to endanger themselves they have the right to refuse work in these public institutions and government jobs?

The Chair: The minister is leaving at three o’clock. Did you want to get on the record first, Mr Wiseman?

Mr Wiseman: Before the minister goes. For many of the reasons that Margaret has said that policemen know the risk, I am sure there is something she did not touch on. The chiefs of police, and I happen to know them in my area, would not send their men in to do something that they knew right off was dangerous, like an armed person. They would stand back, try to negotiate, try to do whatever. But in a job like that you can be standing directing traffic and some nut goes through and hits you. It is a hazardous job and I think you are paid accordingly. Most police in our area get larger wages or more wages than many of the other people in the area.

I go down here to where it says in this one that people who work in a mental institution—my wife happens to be a nurse and she was saying that in Kingston when she was in training they were told the way to properly handle some of these people. For one or two you did not go in without two or three people and those people would count them. If you did not have that you probably lost part of your hair. They would jump on your back and pull out your hair. But sometimes people would do that even though there was help around,

because they would feel, “Oh, she’s been good for a while,” only to have that happen.

The firefighters, we all know that is risky, but no fire chief is going to send his people into something that he knows darn well they are going to be hurt at. Occasionally things do happen and there are certain things out in society that I think are essential services where people cannot just walk away. Imagine an ambulance attendant who came up to an accident and said, “Can’t stand the sight of blood; I’m going,” or, “If I pick him up here somebody’s going to bang into me; it’s hazardous.” So, “I’m out there picking up somebody to go to the hospital and somebody might ram me from behind,” or whatever, so it is hazardous work.

Mrs Marland: That is unfair.

Mr Wiseman: It is not. I know a lot of ambulance attendants in my area and they are not too concerned about this. I can see the one that Bud used, that they have a right to go in and negotiate for more. Nobody should be left alone on a ward if somebody is as bad as those people are. I think they have a right to go in and ask for maybe two on that ward at night and not be left by themselves, but gosh, I just cannot go for policemen being able to walk off or firemen being able to walk off or nurses being able to walk off the ward or people looking after handicapped—I will give you an example.

I was going home one night when I was a minister and in the region they were talking of going on strike. This little old blind lady whom I knew and I had been in to see a good many times said, “Mr Wiseman, what happens if they go off and leave me by myself?” I said, “If they do I’ll be in to look after you,” and I meant that. I do not think essential services like that should be able to do those things. I may be old-fashioned, but I think that our public deserves that and wants that and we have to make those places as safe as we can, but gosh, I do not think they should have the right to refuse work on those grounds.

Hon Mr Phillips: As I said yesterday, I appreciate that probably of all the testimony that was heard at the committee, I think the testimony that was heard around this issue was perhaps among the most compelling, certainly from my reading and the reports that I got from the committee. It is a significant issue that I think has to be resolved. The question then is, how do we resolve it?

I appreciate Mr Mackenzie’s and Mr Wildman’s recommended solution. As you know, we are proposing a different one. I would say that the one we are proposing I think will work. I realize

it is an advisory committee, but it will look at both subsection 23(1) and (2) because there may very well be circumstances where some people who are in subsection 1 should have some recourse to equipment and machinery and things such as that. The idea of the advisory committees is to, as it says here, protect workers in the circumstances described in subsection 23(3), and we list the ones that are in subsection 3.

1500

As I say, we have a difference of opinion about the solution but I do not think we have a difference of opinion about the need to find a solution.

I recognize that in our amendment the solution comes from the two parties getting together, it comes from myself appointing a committee and it will take some time to find that resolution. In any event, I can assure the committee members that I am dedicated to finding a solution. I think, as I said earlier, that among the most compelling presentations to this committee were those from individuals and from the groups representing the individuals around some of the conditions that they faced. We just have a difference of opinion on the solution.

I would provide my personal assurance of a commitment to making that work, because it is in everyone's interest, most of all myself, to make the thing work. As I say, I appreciate there is a difference of opinion on solution but I hope no difference of opinion about the need to find a resolution.

Mr Mackenzie: We are not only inviting putting a Krista Sepp in the same position she was in before but there is something even more fundamental that I wish the minister would take a look at. I do not know a better way to say to our own employees: "Let's continue the confrontational approach. Let's even step it up because we do not trust you." That is exactly what you are saying with the kind of legislation we have here with this bill.

You are going to have to negotiate for protection. My God, what a future for collective bargaining in the province of Ontario if that is what this government is saying: "Because we don't trust you, we're not even prepared to give you even limited rights to refuse." Set parameters, as I suggested earlier, on them if you have to. It is not an approach I like but I would much rather go that way than to just say collectively to the people we are exempting from this bill in Ontario: "We don't trust you. If you want the safety and health protection, you go out and negotiate it." By God, you are begging the

confrontation approach. You are not setting it down in Ontario.

I really wish the government would take a look at it. If we gave the right, if we set some parameters on it, we can take a look at that in two or three years' time and see whether that needs to be changed, but for God's sake, just do not say to them, "We don't trust you."

Mr Wildman: I just want to respond briefly to the comments of my colleague Mr Wiseman and to the minister, and I am choosing my words carefully.

With respect, I think the comments made by Mr Wiseman are an insult to the memory of Ian Harris. To suggest that what we are proposing would encourage an ambulance worker to refuse to go into a situation because of the sight of blood is an insult.

I mentioned that Mr Harris came to this Legislature, met with some of the members of this committee and other members of the House and said he was concerned not only about his own safety but the safety of the people whom he would be responsible for transporting because he saw weaknesses in the training and the airworthiness of the air ambulance service. Within days, he was dead. He was not afraid of the sight of blood; he was trying to protect himself and the people for whom he was responsible.

I submit to you that not only might Ian Harris be alive today if he had been listened to and if he had had the right to refuse but also some of the other people who were on board that aircraft might be alive today.

We all agree that some jobs have inherent risks in them. The jobs that policemen have, that firefighters have, that health care workers have, all indeed have inherent risks. I might suggest, though, that so do other jobs. Working underground in mines has inherent risks. Working on construction has inherent risks. We do not say to them, "You know it is a risky occupation you are going into, so therefore you shouldn't have the right to refuse." We do not say that to miners. We do not say that to construction workers. Why do we say it to policemen, firemen, nurses or ambulance workers?

The point about this whole legislation is that while there are inherent risks in the very nature of some work, it is the responsibility of the employer, the workers and the government to manage those risks and to limit them. I honestly do not believe that suicide is a job requirement no matter what the job, and I do not think that Ian Harris believed that was a job requirement for ambulance workers.

When the risks are not properly managed, then the workers must have the right to self-protection. If employers act recklessly, whether it is by privatizing or by not providing adequate training or not ensuring that equipment is in a proper state of repair, then they are not controlling the inherent risks and the workers must be given the right to protect themselves and the public.

One of the other amendments that has been proposed in this bill is that the right to shut down, for instance, should be a shared right by management and labour. Surely that provides the checks and balances we are looking for; that should protect public safety. I do not understand why a correctional worker or a health care worker should be denied the right. I do not know why Ian Harris should not have been given the right.

I understand what the minister said. I understand that he believes this to be an important and contentious issue and that his setting up of a committee is an attempt to respond to the concerns that were brought before this committee, but I do not think it is an adequate response.

For instance, as I read that amendment, it says the committees will have the mandate to look at this issue but they will not have the mandate to extend the right to refuse. If the minister is concerned about the equipment issue, for instance, that workers should not have to operate faulty equipment, then why is that mandate limited in that regard? Why not allow the committees, if you are going to have committees, to look at that issue and perhaps to come to the conclusion that if there is faulty equipment, public sector workers should have the right to refuse to use faulty equipment?

If we are really concerned about it and the minister believes that the committee approach is the way to go, then give the committees the mandate to protect the workers. I think workers are tired of half-measures, and we are certainly tired of the kind of thing that happened to Ian Harris.

Mrs Marland: I am hoping that my colleague Mr Wiseman is going to withdraw his comments about ambulance drivers.

Mr Wiseman: If I could, I was on there. I just do this for her here and for me. My example of refusing for the sight of blood, I withdraw that. It was a poor example, but I did go on and say that if at an accident they were there, they may refuse because of the traffic and one thing and another. But the one for blood, that was not a good example and I withdraw that.

1510

Mrs Marland: The Peel-Halton ambulance officers, which is the correct name for them, were on strike, I guess it was almost two years ago now. I have not had a lot of experience with different sectors of the workforce on strike. When I was a trustee on the school board I certainly experienced a teachers' strike, elementary teachers and secondary school teachers. But I have to say that when I met with the ambulance officers during their strike, their level of professionalism and their level of commitment to the service that they render on a day-to-day basis to the public would leave for me, without question, the level of professionalism that we are fortunate to have in Ontario today with ambulance officers.

I want to really put that on the record, because I think in the last 18 months, and maybe it is longer than that, we have had three air ambulance tragedies in this province. I do not pretend just because I have a fixed-wing pilot's licence to say that I know anything about helicopters, but I think that those ambulance officers who work in the north and in remote areas and are called upon all the time to operate and save the lives of their patients through the use of a piece of equipment like a helicopter get to know very readily which companies operate a high standard of maintenance on their equipment. I am focusing just on ambulance officers as an example at the moment, but my goodness, there are quite a few categories here where I think these people should be given the same rights as other employees in the province. I emphasize again that I do not agree with the request of the New Democratic Party for police officers and firefighters, but some of these other areas I feel very strongly about.

I want to ask whether an ambulance officer who is dependent on an air ambulance, in fact, does have a right to refuse that job to transport that patient under that clause 23(3)(a) of the act, where it says, "any equipment, machine, device or thing he is to use or operate is likely to endanger himself or another worker." I would suggest that "thing" could be weather, and certainly the Timmins accident was directly related to weather. Is it possible to interpret that section that way and that that officer could have refused that job under that existing section in the act?

Mr Millard: For that kind of worker, the ambulance worker, that is under subsection 2, and of course it says, "Where circumstances are such that the life, health, or safety of another person or the public may be in imminent

jeopardy, this section does not apply." This is where it always becomes very difficult. If there were not imminent jeopardy to the public, life, health or safety, then that ambulance officer would have the right to refuse to operate a dangerous piece of equipment or use a dangerous thing, or based on the physical condition of the workplace, refuse to do that work. That all, of course, is predicated upon whether or not there is an imminent jeopardy to the life, health, or safety of another person or the public.

Mrs Marland: But, you know, the irony is that the jeopardy and the imminent danger is probably the very vehicle that ambulance officer is going to escort the patient in. This is a very narrow, specialized, rare field as a workplace, and I recognize that, but I do not care if we are talking about one life, 10 lives or 1,000 lives, I think it has to be addressed. I think if I were an ambulance officer that I should be allowed to refuse work based on these sections as they are written, and that is what I am asking. Who interprets subsection 23(2) as far as what may be perceived as imminent jeopardy and health, life and safety of the other person, and who interprets equipment, machine or device in the next section?

I know what it is trying to say in terms of, you have to risk your life in order to get that patient to hospital, but that patient is in greater risk in some of these circumstances, and God knows it has been proven, so who interprets in circumstances like that, the coroner's inquest? If so, why do those workers, those ambulance officers who have come before us and explained the jeopardy, the danger and the threats to life, health and safety of another person, namely their patients, in those circumstances, under the act—these officers obviously have the impression they do not have the right to refuse. I want to know who says that.

Mr Wildman: Supplementary.

The Chair: Can we go through the list of speakers, and then we can answer, perhaps, a number of questions.

Mrs Marland: All right.

The Chair: Mr Wiseman was next, and then Mr Wildman.

Mr Wildman: Mr Chairman, I have a supplementary to that.

The Chair: Yes, but you may be pre-empting Mr Wiseman. That is why I tried to avoid that.

Mr Wiseman: Mine, I did ask—

The Chair: You asked already. Mr Wildman.

Mr Wildman: In relation to the question asked by Mrs Marland, the fact is that the Health ministry has regulations with regard to this. They have four grades, and if it is a code 4, that means the person whom the ambulance officers are going to assist is in danger of death immediately. That is the problem. If it is a heart attack victim, for instance, who needs to be transported and it is a code 4, they cannot refuse, even if it is bad weather. You have to weigh the two. The possibility of the person succumbing to his heart attack or being put in danger because it is a snowstorm and the aircraft may have to take off in a snowstorm—that is the problem.

But that still does not answer the question of, what if the equipment is believed to be faulty? If the equipment is believed to be faulty, I think there should be a situation, even in an emergency like that, where the ambulance officers should be able to say: "That equipment is not satisfactory. We refuse to work in that. Get another one."

Mr Wiseman: The last statement there I agree with. Maybe I am wrong, and Margaret flies, but I thought at airports, regardless of who you were, the airport was controlled by—not up in the north. You do not have air traffic control, but you do have somebody, I think, who directs traffic in and out. If the weather conditions got like they were when we were in Sault Ste Marie, where it was almost impossible to get off, except the chairman, and he wished he had not, I think—does that not take it out of the hands of the pilot and into the hands of whoever is saying it is clear? Up there that night, I thought they had to get—

1520

Mrs Marland: Let me answer.

Mr Wiseman: If you could, just to clear it. Because I always thought that is the way it worked.

Mrs Marland: I will answer very briefly. You are giving an example of taking off, and certainly there are minimums for landing and takeoff, but think of the example of where the aircraft is in good weather and flies into bad weather. The final and ultimate decision and responsibility always stays with the pilot.

The Chair: Thank you. Is there any other debate on Mr Mackenzie's motion?

Mr Wildman: I did raise the question about subsection 17(2), which has not been answered.

The Chair: Yes.

Mr Wildman: The other thing I want to raise is that even if you have the kinds of problems we have been talking about, I believe the employer is

open to abusing the requirement of the worker. I asked a question about 17(2) because it relates to this.

The Chair: Are you talking about 17(2) in the act?

Mr Wildman: In the act, yes.

The Chair: Okay.

Mr Wildman: I will give you an example. We had an example brought before this committee of a female corrections officer from Haileybury who was told that she had to get into a van with four inmates, three of whom were males, one was a female, to transport those inmates to another institution. She said no. This was not a life-or-death situation. It was not like a health care worker or an ambulance worker who was being told, "Look, you've got to go." It was not a life-or-death situation in that case. It was simply transporting inmates.

We were told before the committee that correctional officer was suspended because she refused to get in the van with four inmates, three male and one female. Subsequent to her being suspended, we were told, the inmates were divided up and were not transported all together, with two correctional officers to transport them. However, the evidence that was given before the committee was that that female correctional officer was still suspended, even though the supervisor recognized that there was a problem, apparently, and divided up the inmates.

I submit to you that if the correctional officer had had the right to refuse, that kind of abuse, and I use that word advisedly, would not be permitted. She would not have been asked in the first place to go into the van with four inmates, and if she had, she would have been able to refuse. And certainly, if she had had the right to refuse, she would not have been suspended for refusing to do what was obviously unsafe.

These workers, whatever they are, whether they are ambulance officers, correctional officers, firefighters or policemen, nurses or people who work in group homes or whatever, are professionally trained people. They are trained not to place their patients or the people they work with in danger. I submit to you the example of the corrections officer indicates that it is not the workers who are abusing their rights or who would likely abuse the right to refuse. It is supervision and management that are abusing workers.

The Chair: Would this be a good time to get some responses from the ministry to the ques-

tions that have been asked? Mrs Marland is still on the list.

Mrs Marland: I just have one short question that he could answer. How is it the government can set standards for private sector food services, laundries and technical services and yet exempt the government ones that are listed under subsection 23(2)?

Mr Wildman: Mr Chair, if you are asking for questions to be specifically answered, I have one other question.

The Chair: Okay.

Mr Wildman: Could the government explain why it is that correctional officers are not even being extended the limited rights that health care workers now have? I do not think those health care workers have sufficient rights—I want to make that clear—but surely at least correctional officers should be given that small concession of the restricted right that the health care workers now have, because we have no evidence at all that the health care workers have abused that restricted right.

The Chair: Okay, thank you.

Mr Millard: Mrs Marland, whereas the wording remained constant with respect to the act and its provisions for the right to refuse, exemptions from the right to refuse and limitations on the right to refuse, as the minister pointed out here, there is very much the desire to make sure that we provide a practical protection for workers and at the same time create that balance of protecting the public interest and the public health and safety.

I personally have not been associated with other amendments of this act. This amendment proposes to put in place a practical set of measures that will allow for resolution of exactly those kinds of differences of opinion with respect to hazards and imminent danger that you have raised.

Who interprets whether life, health or safety is in danger? You asked me that and you provided a response. It is more than your response. The individuals at that workplace in that circumstance will have to make that very difficult determination of whether the life or health or safety of the public is in danger. If it is a situation whereby the Ministry of Labour is called in to investigate in those circumstances, then of course the Ministry of Labour will also make a determination in those matters.

On your question about why we set regulations for the private sector but not for the public sector, this is one very exclusive provision with respect

to the right to refuse and those who are charged with protecting the public safety: There are some exemptions. There are exemptions for police, firefighters and correctional services, and there are limitations on the right to refuse for those others covered in subsection 23(2).

All of the regulations with respect to safe work practices, all of the act in terms of all of its provisions for providing for a safe work environment, all of the right to know with respect to making sure that workers have the training and information that they need in order to do their job safely all apply, without any difference, to workers in the public service and in the private service. So the one distinction is with respect to limitations on the right to refuse and some exemptions for right to refuse for those who are charged with protecting the public health and safety. Let me hasten to add that I, like others, have the same degree of respect for the very difficult job that those people have to do and for the way they do that job.

1530

Why do correctional officers not have the limited right of health care workers. Mr Wildman, I think the concern that has existed is that the opportunity for any situation whereby people kept in a correctional institution may, through whatever set of circumstances, have the opportunity to be unsupervised or unguarded for whatever reason that may exist in that facility—whether it is, as you said, for a substance or whatever else—the feeling is that creates a balance with respect to endangerment of public health and safety as well, through those inmates, that has not been determined, but the same set of circumstances should prevail.

That is why we propose to provide what is very much intended to be, and I think will be, that usable and practical set of protections whereby we can provide for a dispute resolution mechanism, because in these circumstances there will be some difference of opinion, I anticipate, with respect to whether a hazard exists to the extent that the life, health or safety of the public is endangered.

I would hope that exactly in the situation and in the circumstance you so poignantly brought to our attention this would allow that individual to have recourse to a higher decision-making authority, through this kind of procedure before that act was undertaken, so that that person could have their concern resolved by somebody other than the immediate person who, one must assume from the description of it, would be that the immediate supervisor who notwithstanding

the concerns of the individual directed the individual to undertake that job. I would hope that individual requested to undertake that job would have access to some greater decision-making intervention to satisfy that set of concerns.

I will have to ask you to repeat your question with respect to subsection 17(2) because I am afraid I did miss it.

Mr Wildman: Subsection 17(2) of the act says that no worker shall “(b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself or any other worker.”

My question is—we use examples here so it is not completely hypothetical—if a worker is told by a supervisor to use a piece of faulty equipment that may in fact endanger himself or another worker, but that worker does not have the right to refuse, what happens? How does the worker comply with his obligation under subsection 17(2) of the act?

Mr Millard: First, that employer who gave that direction would find himself or herself in contravention of the legislation for making that direction and not being competent, as a supervisor is expected to be and obligated to be under the act. The recourse we are trying to provide is a set of dispute resolution mechanisms and procedures whereby that individual, required by a supervisor to undertake what that person believes to be dangerous work or operate dangerous equipment, would have recourse to a higher level of decision-making intervention to have that concern resolved.

Mr Wildman: Just in response, briefly, I was going to apologize for the time but I am not going to apologize. This is so important that frankly I do not give a damn if we do not finish the bill.

The answer I just got from Mr Millard I think does not really deal with reality. To use the case I hypothesized, a faulty piece of equipment: Mr Millard said that obviously the supervisor would be in contravention of the act. I do not debate that, but if the worker then has to appeal to a higher authority, what if it is a Ministry of Transportation road crew? The highest authority is the foreman who is telling the person to use that equipment. To whom does he appeal, or does he wait till he gets back to the patrol yard after the shift and go to the boss there and say, “Look, I was told today to operate a snowplow that was not safe.” If this happened near the beginning of the shift, he has eight hours or so, I guess, to operate that machine even though he has objected. I do not understand.

Mr Millard: In that particular circumstance you describe, the individual would have the right to refuse.

Mr Wildman: All right. Then what if this person is a health care worker or if this person is a correctional officer?

Mr Millard: If the person is a health care worker and if the circumstances are not such that the life, health or safety of another person is in imminent jeopardy, then that person has the right to refuse. If in that set of circumstances it is determined by that individual that the life, health or safety of another person may be in imminent jeopardy, then that person, I am suggesting, in a set of procedures appropriately arrived at and derived between the two parties and then regulated by the minister, would give that person some authority to have another level of decision-making with respect to the appropriateness and the safety of undertaking that job.

Mr Wildman: I will not prolong it except to say this. Mr Millard indicated that in one of the examples I used where there was a dangerous substance in the workplace, and if it were a correctional facility there would be concern that if the worker had the right to refuse, that would then leave a situation where the inmates were not properly supervised and that then might cause danger to other inmates or to the public.

Do we really believe that if asbestos were in a location and the correctional worker had the right to refuse and exercised it, we would then say to the worker, "You do not have to be in that location because there is asbestos, but the inmates have to stay there." Obviously, if it was dangerous to the correctional officer, it would be dangerous to the inmates as well. So you would have to move the inmates. You would not leave them unsupervised.

Mr Millard: I agree.

Mrs Marland: When Mr Millard said that they are looking for practical protection for workers while protecting the public's life, health and safety, I do not think any of us can argue with that, but I think we have had enough examples where I sincerely wish the government would be willing to look more closely at some of the categories in subsection 23(2) in terms of the facilities.

I just cannot accept that people who choose to work in nursing homes—I notice the wording is very carefully phrased so that it does not matter whether it is a private nursing home or a public nursing home, but obviously if it is a private nursing home they are not going to have the

protection of OPSEU. What we are saying here is that these other jobs, normally—you would not think people would be at risk in those other workplaces, and yet we have so much strong evidence that they have been at risk that I do not quite understand the government's reluctance.

Maybe they did look very closely at this before they drafted Bill 208, but you have to wonder what the concern is about a work refusal in a laboratory operated by the crown or a laboratory licensed under the Public Health Act, just as an example. Why would you be concerned about them? If they are doing biopsies and things, you are not necessarily even involving, in an immediate nature, somebody else, as you are with security with a correctional officer, for example. Can you tell me why that is in there?

1540

Mr Millard: Once again, that is all conditioned on whether there may be imminent jeopardy to public life, health or safety of another person. In most instances in a laboratory my assumption would be exactly the same as yours, that there would be no imminent jeopardy to the life, health or safety of another person or the public created by virtue of a refusal to undertake work that a person believed was dangerous. Therefore, that person does have the right to refuse unsafe work. That opportunity to refuse is there.

Mr Dietsch: You are not reading the whole phrase.

Mr Millard: That person's right to refuse dangerous work is restricted when there may be imminent jeopardy to the life, health or safety of another person or the public. In most cases, as I said, in a laboratory that would not be the case.

Mr Dietsch: Just searching for questions.

Mrs Marland: I take exception to Mr Dietsch's comment that all we are doing is searching for questions. It might do this Liberal government some good if it started to search for some questions too. If you have an opinion of how I am doing my job, Mr Dietsch, I would appreciate your keeping it to yourself.

Mr Dietsch: Is that through the chair, or do you want me to respond?

Mrs Marland: It is through the chair.

The Chair: Mr Dietsch's interjection is out of order anyway, so please ignore it.

Mrs Marland: You do your job and I will do mine. I am searching for questions, Mr Chairman, to find a reasonable piece of legislation where everyone is protected, and the public has

to include the people who work in public sector workplaces. It is fine to say it is so well laid out in subsection 2, which is the condition under which they can enact their rights, but I just do not think that this legislation is fair in those sections. I do not know why under clause 23(3)(a) you could not add after or before "any equipment, machine, device or thing"—why would you not put "person" there?

If somebody is at risk because of a person—I will tell you, I would love to go to the Charter of Rights with that section and prove that maybe a person is a thing. Maybe under some circumstances a person who is 300 pounds and I weigh 100—would that not be wonderful? I am some little worker in a psychiatric institution, mental health or mental retardation centre or rehabilitation facility. I am this little 100-pound person in one of those facilities and I have to cope instantly, not with two or three days' notice that this may be a dangerous workplace, with a change of personality in a 300-pound man, I would suggest to you that person at that point would be a machine against me.

That is the problem, I know, with the English language. We can look and look and get into real semantics here, but why would you not consider adding "person" in that section, so that at least they could refuse work under all your foregoing conditions, adding "person" as a risk to them?

The Chair: Did you wish to respond, Mr Millard?

Mr Millard: I am not prepared to respond at the moment. I have not had time to think of all the implications of that, so I am just not prepared to respond at this point. I am sorry.

The Chair: Okay, can we move over to Mr Mackenzie's question or statement?

Mr Mackenzie: It is a question, not a statement. We have heard from both the minister when he was here, and I wish he were here at the moment, and from Mr Millard that they recognize the extent of feeling and emotion that is involved in this issue, and I think, by implication, what they are doing to their own workers, the public sector workers, in excluding them from the rights under this bill. The only answer they have given us to come up with how they are responding to this concern which they feel as well, or so they tell us, is to set up in place a series of advisory committees to look at the various categories and how you might move beyond the exclusion that is in the bill, I presume.

I would simply say to Mr Millard, as I would have said to the minister, that if you were sitting here as a health care worker or nurse, or any of

the various groups that have gone through the years of hassle they have had in trying to establish health and safety regulations for the health care workers, and reached at least what they thought was an agreement and then had the rug pulled out from under them—I am talking in recent times now—and after a number of years had gone the—I guess it is not an advisory committee—the committee and co-operative approach of trying to come up with regulations that have been promised for four or five years now in the health care field and had got nowhere, what the hell trust would you have for, or how much would you expect from one of these advisory committees?

Mr Wildman: I think in a way we are putting Mr Millard in a difficult position. I am not attempting to do that. I understand the minister had a previous engagement. I am attempting, though, to understand how the process will work if our amendment does not carry.

Following through with the answer Mr Millard gave before, if in a correctional facility a maintenance worker—not a guard, but a maintenance worker—who does not now have the right to refuse was requested by his immediate supervisor to use a defective piece of equipment or a piece of equipment which he believed to be defective, according to Mr Millard's previous response the worker would have access to a senior manager if there was a disagreement between him and his immediate supervisor.

Mr Millard: If I may, that is what I would hope and is anticipated would be included in a procedure to be developed that would subsequently regulate it.

Mr Wildman: I understand that, and I understand there have been discussions between OPSEU and corrections around all of these kinds of things.

Mr Millard: There have been limited discussions in that regard.

1550

Mr Wildman: Okay. But—I realize there are a lot of ifs here—what if the senior manager does not agree with the worker and says: "No. I think this is not a defective piece of equipment; it is okay"? Is it not true that worker then would have to continue to operate that piece of equipment? And if he had the access, of course, to calling in the ministry inspector, would he not still have to continue operating the equipment while the issue was being investigated?

Mr Millard: I cannot answer that part, because I do not know what the next part of the

procedure might be. I would hope that included in that procedure would be some expeditious and, hopefully, concurrent access to the Ministry of Labour while this dispute, I will call it, was being resolved. Clearly, if it has reached that point, you have two people who presumably both are knowledgeable about the workplace and its conditions who have a difference of opinion with respect to the hazard inherent. So I would hope there would be some method in that procedure and have some concurrent access to the Ministry of Labour.

The Chair: Thank you. Any further debate on Mr Mackenzie's motion?

Mr Wildman: I would like to make one more comment. Obviously, from the difficulty in getting answers that we have experienced here today, it is going to be very difficult to resolve these issues if the workers do not in fact have the right to refuse, and so I would urge the members of the committee to support our amendment.

Mrs Marland: Mr Chairman, when would you accept an amendment to subsection 23(3a); after this motion that is before you now?

The Chair: I am glad you raised that. There are other amendments to section 19 and I believe that when a motion has been moved, we must deal with that motion before we adjourn today and report the bill to the House. So if you are going to move any kind of amendment after we have dealt with this one, we would have to dispose of it through calling the question on it. So you might want to think about whether or not you want to move another amendment; it is entirely up to the member whose turn it is to move the motion. For example, the next motion is a government motion.

Mrs Marland: You can move amendments in committee of the whole House that have been moved and defeated in this committee, though, can you not?

The Chair: If it was reopened; but there would have to be negotiations among the House leaders, I would assume, to determine what would be reopened in the bill. I am not trying to cut off your amendment.

Mrs Marland: No. I understand what you are doing. By voting on Mr Mackenzie's motion, we still have a government motion on the same section anyway, so that is fine.

The Chair: Yes. That is correct. My only point was that the government motion has not yet been moved, but once it is moved we must dispose of it this afternoon. Okay?

Mrs Marland: Right.

The Chair: And also section 7a, which is linked to this. Okay?

Mr Mackenzie: I want a recorded vote, clearly.

The Chair: Yes. I believe the committee is ready for the question on Mr Mackenzie's motion and on section 7a, because it has already been moved.

Mrs Marland: Because Mr Mackenzie's motion reads "subsections 23(1) and (2);" is there any way we could vote separately on subsections 23(1)(a) and 23(1)(b)? I would support your motion if we could eliminate subsections 23(1)(a) and 23(1)(b). If we could eliminate police officers and firefighters, I would support your motion.

Mr Wildman: Well, Mr Chair—

The Chair: The trouble is, the motion is worded as one, so I do not think we could—

Mrs Marland: So it is all as one?

The Chair: Yes.

Mr Wildman: And, quite frankly, we see this as indivisible.

Mrs Marland: I know you do, but I am just asking.

The Chair: Okay. Is the committee ready for the questions, first of all, on subsection 19(1), Mr Mackenzie's motion on subsection 19(1)? All those in favour of Mr Mackenzie's motion, please indicate. This is a recorded vote.

The committee divided on Mr Mackenzie's motion, which was negated on the following vote:

Ayes

Mackenzie, Wildman.

Nays

Bossy, Carrothers, Dietsch, Epp, Lipsett, Riddell.

Ayes 2; nays 6.

Mr Dietsch: To go through an hour-and-a-half debate and then to get up from the table and walk out of the room is absolutely disgusting.

The Chair: However, it is in order. Section 7a, for members who are still keeping track, was a government motion—

Mrs Marland: On a point of privilege, Mr Chairman: I think that when a member is in a position where a recorded vote is being taken and that member cannot support the motion that is on the floor from either side of the issue, the

member has no choice but to remove himself or herself from the room. I object, having just removed myself from the room because I could not support the motion on either side, to know that the government whip, the member for St Catharines-Brock would then, on the record, take advantage of my absence by criticizing my actions. On a point of privilege, I want to say that I think that is very demeaning of that member on himself.

Mr Dietsch: Not at all. We were dealing with the motion that was on the table.

The Chair: Order, Mr Dietsch, please. We are dealing with section 7a of the bill. This was a government motion by Mr Dietsch. Ready for the question? Is this a recorded vote as well? All those in favour of Mr Dietsch's motion, please indicate. Mr Epp, Mr Carrothers, Mr Dietsch, Mr Lipsett, Mr Riddell, Mr Bossy,

All those opposed to Mr Dietsch's motion. Mr Mackenzie, Mr Wildman—I need a vote from—

Mrs Marland: Which of Mr Dietsch's motions?

The Chair: This is section 7a.

Mr Wiseman: Could you just tell me what it is again? I was out. I am sorry. I was talking to my secretary, who is leaving on a holiday.

The Chair: Excuse me. This is the amendment that sets up the advisory committees. How do you wish your vote recorded?

Mr Wiseman: I will vote with the government.

The Chair: In favour of. Thank you.

Motion agreed to.

The Chair: That takes us to where we are. We must make a decision as to whether or not we proceed with the government motion amending subsections 19(1) and 19(2). Are you prepared to move on that, knowing that we will have to vote on it before we adjourn?

Mr Dietsch: Yes, Mr Chairman.

The Chair: Mr Dietsch moves that subsections 19(1) and 19(2) of the bill be struck out and the following substituted:

"19(1) Section 23 of the said act is amended by adding thereto the following subsection:

"(3a) Without limiting the generality of subsection (3), a worker may refuse to perform a work activity if the worker has reason to believe that the performance of the work activity is likely to endanger the worker or another worker within the day or a reasonable number of days thereafter.

"(2) The said section 23 is further amended by adding thereto the following subsection:

"(6a) Without limiting the generality of subsection (6), a worker may refuse to perform a work activity if the worker has reasonable grounds to believe that the performance of the work activity is likely to endanger the worker or another worker within the day or a reasonable number of days thereafter."

Mr Dietsch: The intent is to try to add some definition to the work activity as possible grounds for exercising the right to refuse dangerous work. It is not intended, of course, to deal with long-term hazards or hazards that could endanger the health over a longer period of time, but certainly it is trying to develop a measure for strengthening the internal responsibility system. We recognize the challenge of trying to be definitive in these grounds. We feel that the opportunity or the wording that we have put forward will accomplish that goal.

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Mr Wildman: In our view, the phrases at the end of both sections in the amendment make the first phrases in both sections meaningless. We were given testimony before the committee that currently, under the present legislation, the Ontario Labour Relations Board has argued that repetitive strain injuries can be reason for exercising the right to refuse. I understand that it appears, at least, in the amendment the government is trying to protect that right by saying "without limiting the generality." However, the government then proceeds to limit the generality by saying that the worker may exercise the right to refuse if he or she believes "that the performance of the work activity is likely to endanger the worker or another worker within the day or a reasonable number of days thereafter." That in itself raises a problem because we do not know what a reasonable number of days is. What is reasonable for the worker might not be reasonable for the supervisor, and the inspector may have a different view of what is reasonable as well. So that raises problems in itself, using that term "a reasonable number of days."

But in terms of repetitive strain injury we know that, particularly in terms of ergonomic problems, if workers have to perform a repetitive movement over a long, long period of time, that may in fact result in injury such as carpal tunnel syndrome. And how does a worker know that doing a repetitive work activity may in fact result in injury within a few days? It may take months or years to develop. In my view, that phrase at the end does in fact limit the generality; it does limit

the application. In fact, what is happening in this amendment is that the government still is limiting the right of a worker to refuse to perform a work activity, a right that has been recognized and has been upheld by the Ontario Labour Relations Board.

Initially we were told in the introduction of the amendments that the reason for this was that the government was attempting to define work activity, and the government was talking about lifting or twisting heavy loads. But just by defining it, in my view, that limits the right. We do not have, at this point, any regulations on repetitive strain. If we do not have those regulations, and we do not know when we are going to get them, if ever, then this just is not acceptable. A worker must have the right to refuse to do a work activity that may, in his or her opinion, result in injury, whether or not it is going to be immediate, whether or not it is going to be within the day, eight hours or a week or two subsequent.

I suppose the ministry might argue that "reasonable number" is vague enough, and that maybe 30 days, six months, a year or two years, in the opinion of the worker or even the inspector, is reasonable, but we do not know that. Somehow I do not believe that the ministry intends to accept a worker's argument that if he might sustain an injury two years hence because of a repetitive activity he has to do, he has the right to refuse. If that is what it means, and I suspect that is what it means, then it is unacceptable.

Mr Mackenzie: I just want to continue for a second with the argument that was being made by my colleague. Without limiting the generality of subsection 3, I guess what I would like the ministry to tell me and convince me—and I think we have one of the unions here that has won this argument on work activities before the labour board—is how we are not going backwards with this section and how that is still in force without limiting the generalities, with the last two lines of the two sections there, "within the day or a reasonable number of days thereafter." I would like to be convinced as to what the protection is now in that section.

The Chair: Do you want to do that now, Mr Millard?

Mr Millard: Yes. Subsection 3 provides that a worker may refuse to work, or do particular work, where he has reason to believe that—and then there are a number of subsections after that that define a number of conditions that the worker believes are likely to endanger himself.

In 1990, I understand, revisions to these pieces of legislation will be made to make them nonsexist and say "himself or herself" as an omnibus action of the government. That will be addressed.

There has been a considerable cloud raised with respect to a hearing and an appeal of an order made by this ministry with respect to whether or not a work activity does legitimize in legislation the right to refuse dangerous work. That cloud has been raised by a finding that, in fact, work activities were not a reason for refusal. My understanding is that that has not been pursued through judicial review, which could be the next avenue of appeal. To clearly not limit the possibility that section 3 does have the meaning of work activity as well, we have said, and without limiting the generality of that section—so we do propose that this work activity, as described, is in addition to what at least the present jurisprudence tells us is available within the confines of the Occupational Health and Safety Act.

Mr Wildman discussed leverage and refusals in the context of leverage the other day. Our ergonomists are now placed out in the field. We are handling some six or seven cases a month for each ergonomist. It does allow us to be out there. Ergonomics, I am sure people understand, is a study in the science of human motion and movement, particularly, in our case, as it interacts with technology in the workplace. Our ergonomists are out there on a daily basis correcting improper interaction of the human body and movement of the human body at the work station.

A complaint with respect to any one of those concerns will bring us to that workplace. We can and we do write orders without there having been a refusal. A refusal is not likely to be an answer to a subject that is likely to require a long-term solution.

Our ergonomists believe that they can determine those kinds of activities that are likely to endanger within a day or a reasonable number of days and are prepared to make sure that workers are not endangered by those longer-term by writing the necessary orders, doing the necessary ergonomic studies, and I think also by making the kind of information available to the workplace that needs to be made available in these things and not just by form of regulation, although I do agree, after having seen what has been done in Australia, after a large number of years and a book—I am exaggerating, but I

think some three inches or approximately eight centimetres thick—

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Mr Wildman: Did you injure yourself by lifting it?

Mr Millard: I have studiously tried to avoid that. But the Ontario Federation of Labour, CUPE, the safety associations, a number of providers of service and information and the Ministry of Labour have begun to put out more and more information to the workplace parties with respect to those long-term repetitive strain injuries. I think we have a way here that we have clearly added to the act and a way to administer both the concern for short-term and long-term injury and endangerment as a result of work activity.

Mr Wiseman: I, like Mr Wildman, had a little problem with "a reasonable number of days" from both sides, the employer and the employee. I do not know whether we could get our lawyers to come up with a different wording or a different time. All I can see is that you are going to have one side saying, "That was done in a reasonable length of time," and maybe the other side saying, "It wasn't," then the inspector coming in and maybe one would say it is reasonable and the other would say it is not.

I do not know in these things whether there is a way we could say within a certain length of time and make it so that both parties know what length of time they are talking about, because it is kind of up in the air there. Again, as I think Mr Wildman said, what I think is reasonable may not be reasonable to somebody else. I think the more you can iron it out between yourselves without going to the Ministry of Labour and then even having its inspector coming out and defining what he thinks "reasonable" is—there is a real problem there. I think that if there was a way the ministry could do that, that might save it and its inspectors a lot of hassle down the road. Is there any other wording or any other timing that they would accept?

The Chair: Perhaps we will hear from a couple of other people.

Mrs Marland: I do not think that what I want to address can be addressed while we are dealing with Mr Mackenzie's wording.

Mr Mackenzie: It is not my wording; it is the government's.

Mrs Marland: Pardon me. I meant the government's. I was trying to see whether because the amendment is dealing with clause 23(3)(a), the government would accept my

amendment that I wanted to place to include "person" ahead of "equipment, machine, device or thing." I need some advice as to how I can place my amendment.

The Chair: Could you perhaps send a copy of your amendment up here so that we could have a look at it while the debate is going on?

Mrs Marland: Okay.

Mr Wildman: Perhaps just for the assistance of the committee, the legal counsel we have or Mr Millard might attempt to define what is meant by "a reasonable number of days" and tell us who decides what is reasonable. It seems to me in regard to a work activity, particularly a repetitive activity, a reasonable length of time within which this might adversely affect the worker is going to be different almost with every individual because every individual is different. I would just like to know what the government means by "reasonable." What does the legal counsel think it will mean? Who determines what is reasonable?

The Chair: Mr Millard or Ms Beall.

Mr Millard: Let me first deal with what is likely to be said about "reasonable" as it is couched in the legal context here. I assume that inasmuch as it says—and I look to my left to make sure that Kathleen Beall will step on my left index as soon as I go beyond my level of competence which was about an hour ago when I passed my level. None the less, since it says "a day," then it talks about "a reasonable number of days thereafter," I think it is likely to talk about "reasonable" in terms of units of days as opposed to units of months or years. So I would assume that is likely to be that legal context in couching of the meaning of "reasonable."

Mr Wildman: Within a week likely.

Mr Millard: It could well be within a week. From our administrative point of view "reasonable," as you said, will have to be based upon physical capacity and capacities of an individual, the frequency of repetition of the activity, how long the work breaks are, the rest breaks, the recovery periods between those kinds of work activities.

As I say, our ergonomists are becoming well equipped to make those kinds of determinations. I think we will continue to find in some instances, and perhaps a number of instances, that even though it is not likely to endanger within a day or a reasonable number of days thereafter, we will still order, and I know we will order, corrections in the interaction of that work activity with the workstation. "Reasonable" will be defined mostly through our application of the science of

ergonomics, and of course ultimately perhaps there may be some jurisprudence developed around this to give us some guidance in what is a reasonable number of days.

Mr Wildman: Just to give one practical example, the Amalgamated Transit Union appeared before the committee and indicated that it had had a number of back problems among its workers because of an inadequate seat on a bus for a bus driver. They gave the example of I think it was the municipality of Mississauga that is now changing, getting a new seat and experimenting with a new seat to try to ensure that the backs will be properly supported for the driver who sits for a number of hours in that seat.

My question is, under this wording, would a driver of a bus be able to exercise his right to refuse if he has indicated or if his union or a representative has indicated that this seat is uncomfortable and is not properly supporting his back and that he thinks that if he continues to sit in this position in this seat, he may in fact develop a back problem?

Mr Millard: I cannot tell you for sure whether or not that would be grounds for refusal. It sounds like it would be a longer-term occurrence.

Mr Wildman: That is what I was afraid of.

Mr Millard: You may be afraid of that. I hope you will not be afraid of my entire response.

Mr Wildman: No, no.

Mr Millard: It may be that that ultimate back injury or back problem is going to occur some number of years down the road. That is the kind of situation that the refusal is not likely to correct. Certainly that person has the right to complain about that work condition to us and to have us investigate and to have us write orders. We have been able to correct a number of ergonomic situations without refusals and we will continue to do so.

We worked with the food groups, for instance, redesigning cashier stations where the injury was not likely to occur in a day or even a few days or perhaps even a few months, but ultimately people were developing ergonomic-related injuries and we were able to make corrections. So that is the way we would try to address those kinds of situations, Mr Wildman.

The Chair: Any other questions or comments on Mr Dietsch's motion, subsections 19(1) and (2)? Is the committee ready for the question? We are not waiting for Mrs Marland's amendment because it does not amend Mr Dietsch's motion; it amends the section itself. So we will not wait for Mrs Marland's motion. As a matter of fact,

we are going to need unanimous consent to go back to it because it comes before Mr Dietsch's. Anyway, let's deal with Mr Dietsch's now. A recorded vote has been requested.

The committee divided on Mr Dietsch's motion, which was agreed to on the following vote:

Ayes

Bossy, Carrothers, Dietsch, Epp, Lipsett, Riddell.

Nays

Mackenzie, Marland, Wildman, Wiseman.

Ayes 6; nays 4.

The Chair: In order to deal with Mrs Marland's amendment, we should make a couple of decisions. One is whether or not to have unanimous consent to move to it, but second, does the committee wish to proceed? It is after four. Do you want to proceed with the balance of the amendments on section 19?

Mr Dietsch: I would like to finish section 19, Mr Chairman, if we can.

The Chair: Let's see if the opposition—Mr Mackenzie, we are having a discussion about whether or not we want to proceed and finish off the amendments on section 19.

Mr Mackenzie: I think we should move into the House now, Mr Chairman.

The Chair: Is that agreed?

Mrs Marland: Speaking for our caucus, I do not see much point in proceeding at this point. So I will be happy to deal with my amendment in the House.

The Chair: Is that agreed with, members of the committee, that we do not finish? There is no order that we have to follow here. We can proceed or we can move it back—

Mr Dietsch: I was hoping that we would be able to get through this section, but unfortunately that does not appear to be the case.

The Chair: There are three more amendments on section 19.

Mr Dietsch: I realize that.

The Chair: Okay. I need somebody to move that I be ordered to report the bill back to the House, as amended.

Mr Bossy: I move that.

The Chair: Mr Bossy has so moved.

Bill, as amended, ordered to be reported.

The Chair: I am sure I speak for members of the committee when I express my appreciation to

Mr Millard and Ms Beall for their help in wending our way through the bill as far as we got and to Ms Hopkins for helping the committee. We are then adjourned until the call of the chair.

The committee adjourned at 1624.

ERRATA

No.	Page	Column	Line	Should read:
R-6	R-350	1	11	

From the Ontario Public Service Employees Union, Sudbury Area Council:

Mailloux, Dennis, President; Health and Safety Representative, Local 617

Regimbald, Gerry, Unit Steward, Local 628

Dalton, Nancy, Correctional Officer, Haileybury Jail

Ethier, Muriel, President, Local 628

DeMatteo, Robert, Health and Safety Co-ordinator

From Inco Ltd:

Parker, Paul, Vice-President, Administration, Engineering and Maintenance

Anderson, Dar, Manager, Safety and Training

From the United Steelworkers of America, Local 6500:

McGraw, Don, Chairman, Safety, Health and Environment Committee

Campbell, David R., President

Dionne, Julien, Co-Chairman, Mining Section

From Denison Mines Ltd:

Moreau, Paul, Manager, Loss Control

From the Canadian Union of Mine Mill and Smelter Workers, Local 598:

Hrytsak, Gary, Vice-President and Compensation Officer

Papke, Melvin, Safety and Health Chairman

From the Sudbury Construction Association:

Dolson, Doug, Honorary Treasurer

Martin, Harold, Executive Director

From the Canadian Paperworkers Union:

Viau, Lawrence, Health and Safety Representative

Daviau, Homer, President, Local 74

R-10	R-602	1	39	Mr. Dietsch: The other point I want to ask
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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Chair: Laughren, Floyd (Nickel Belt NDP)**Vice-Chair:** Mackenzie, Bob (Hamilton East NDP)

Dietsch, Michael M. (St. Catharines-Brock L)

Fleet, David (High Park-Swansea L)

Harris, Michael D. (Nipissing PC)

Lipsett, Ron (Grey L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miller, Gordon I. (Norfolk L)

Riddell, Jack (Huron L)

Wildman, Bud (Algoma NDP)

Substitutions:

Bossy, Maurice L. (Chatham-Kent L) for Mr Miller

Carrothers, Douglas A. (Oakville South L) for Mr McGuigan

Epp, Herbert A. (Waterloo North L) for Mr Fleet

Wiseman, Douglas J. (Lanark-Renfrew PC) for Mr Harris

Clerk: Mellor, Lynn**Staff:**

Hopkins, Laura A., Legislative Counsel

Witnesses:**From the Ministry of Labour:**

Phillips, Hon Gerry, Minister of Labour (Scarborough-Agincourt L)

Millard, T. J., Assistant Deputy Minister, Occupational Health and Safety Division

Beall, Kathleen, Counsel, Legal Services Branch

FEB 26 1992



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